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Indiana
Family Court Project

Fall 2003

Indiana Family Court Project

The First Four Years

A Project of the Indiana Supreme Court

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Chapter 1

Creating the Family Court Concept in Indiana

A. The Vision

The increasing complexity and proliferation of court proceedings involving members of the same family led Indiana jurists, lawyers and legislators to search for better ways to coordinate and handle such cases.

In his 1997 State of the Judiciary address, Chief Justice Randall T. Shepard urged the legislature to examine the idea of creating family courts in Indiana by funding three pilot counties where people would like to volunteer to try something different. The Chief Justice discussed the need for reform:

The legal problems generated by tens of thousands of troubled families come to the courts in many ways - divorce, delinquency, children in need of services, domestic violence, to name a few. In counties of any size, it is possible that the same family may wind up in two or three different courtrooms depending on the legal label used for the cause that brought them to court. The solution to that problem is a family court. A family court is a place where you deal with the whole family in a single courtroom regardless of legal label.¹

After attending the 1998 Summit on Unified Family Courts in Philadelphia, Associate Supreme Court Justice Frank Sullivan, Jr. addressed the Indiana Commission on Courts, noting favorably the following aspects of the national movement for family courts: coordination of the family's multiple cases before the same judge, court referral to a wide array of social services for children, availability of mediation and other forms of non-adversarial dispute resolution in family law matters, and legal assistance to pro se litigants.² Justice Sullivan urged that the family court concept involves shifting our mind-set from organizing family law cases on a case-by-case basis to a family-by-family basis.³

Over the past years the Indiana Supreme Court has been persistent in identifying the needs of families and advocating new approaches. The Indiana Family Court Project provides the means to test and develop model systems to better serve children and families in the court system.

It is important to note that the Indiana Family Court Project is more than just case coordination and programming. It is a concept based on the

¹ Chief Justice of Indiana Randall T. Shepard, "State of the Judiciary," (Jan. 30, 1997).

² Although Cincinnati, Ohio is credited as having the first family court in the early 1900s, the family court concept really took root in the 1950s with the development of the Standard Family Court Act to assist states interested in creating family courts, and in the 1960s with the establishment of statewide family courts in Hawaii and Rhode Island. See Barbara A. Babb, "Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts," 32 *Family Law Quarterly* 31, 35-37 (1988). In the 1990s, the National Council of Juvenile and Family Court Judges and the American Bar Association endorsed the family court approach. See Sanford N. Katz and Jeffrey A. Kuhn, "Recommendations for a Model Family Court; A Report from the National Family Court Symposium" (National Council of Juvenile and Family Court Judges, May 1991). See also ABA, "Policy on Unified Family Courts" (adopted August 1994), 32 *Family Law Quarterly* 1, 1-2 (1998). There is currently significant family court activity in California, Florida, and Ohio. See "Unified Courts For Families Symposium Manual" (Center for Families, Children and the Courts-California Administrative Office of the Courts, September 24-25, 2002); "A Model Family Court for Florida: Recommendations of the Florida Supreme Court's Family Court Steering Committee" (Office of Florida State Court Administrator, June 2000) (available at Web site www.flcourts.org or by telephone at 850-922-5691); Gregory J. Halemba and Hunter Hurst Jr., "Ohio Family Court Feasibility Study" (National Center for Juvenile Justice, April 18, 1997). There is innovative one family-one judge programming in Kentucky and some counties in Oregon, Washington, and California. See *Rural Family Courts in Kentucky: Lessons Learned* (State Justice Institute, 2001); Victor E. Flango, "Creating Family Friendly Courts: Lessons from Two Oregon Counties," 34 *Family Law Quarterly* 118 (2000); Hon. Steven J. Howell, "One Judge-One Family: Butte County's Unified Family Court," 1 *Journal of the Center for Children and the Courts* 171 (1999). In January 2003 New York's Chief Judge Judith S. Kaye announced her intention to seek coordination of criminal, family, and protective order cases involving the same family members in Integrated Domestic Violence (IDV) Courts in which one judge handles all family-related matters involving the same family as one integrated proceeding. See Johnathan Lippman, "IDV Court Shows New Way to Treat Families in Crisis," *New York Law Journal* (January 29, 2003).

³ Justice Frank Sullivan Jr., "Unified Family Court Structure Recommended," *Res Gestate*, November-December 1998, at 28-30.

significance of family in our culture and our legal system. It recognizes the unique stresses and safety issues in family litigation, the role of the family in affecting individual behavior, and the particularized need for timeliness and consistency in judicial rulings involving children. The family court concept maintains that case coordination is required to avoid uninformed, inconsistent, or delayed rulings for families with multiple cases in the court system. It emphasizes a holistic and non-adversarial approach to problem solving. The concept encourages judges and attorneys to fully disclose information about the family’s legal cases in order to obtain a complete and long-lasting resolution to the family’s situation. The concept eschews unnecessary adversarial tactics. The family court concept promotes an open, common sense approach to the resolution of legal issues affecting the safety and stability of children, within the parameters of due process of the law.

B. Phase 1 (1999-2001)

At the request of the Supreme Court and with the support of bar members and trial judges, the Indiana General Assembly appropriated \$400,000 in 1999 for a two-year pilot project.

The Supreme Court appointed the Honorable Margret G. Robb to chair the newly formed Family Court Task Force and asked the Division of State Court Administration to implement the project. The Division retained the services of a family court expert to research national trends in family court development and to suggest feasible models and strategies for Indiana. Ultimately, the Division contracted with the family court expert to provide not only substantive legal consulting services but also to provide hands-on management of the local projects.

Eight counties applied through detailed written applications to serve as pilot counties. The Task Force strongly encouraged counties to generate

broad based support for their projects within the judiciary, bar, and other important stakeholders of their communities. Another key element of the selection process was the transferability of the proposals, with the intention that the pilot counties would serve as mini laboratories for developing processes that could easily be implemented in other counties of similar composition. The Task Force indicated a preference for proposals that demonstrated broad based support and identified workable and transferable models.

The Task Force recommended and the Supreme Court selected the proposals submitted by **Johnson**, **Monroe** and **Porter** Counties for grant awards. These counties proposed two different models for coordinating the cases of families who have multiple cases pending before more than one judge, and they proposed the development of other specialized programming that would serve families more expeditiously.

Although there were not enough grant funds for a

Table 1: Phase 1 Family Court Counties

	County Seat	Population	Number of Judicial Officers	Location
Phase 1				
Johnson	Franklin	115,209	6	Central
Monroe	Bloomington	120,653	7	South
Porter	Valparaiso	146,798	9	Northwest

family court project award to a fourth county, the Task Force decided to draw Putnam County within the project by providing consulting services to help it develop affordable non-adversarial dispute resolution services in child protection cases, pro se custody disputes, and other intra-family litigation. Putnam County received funds through the federal Court Improvement Project to resource its innovative dispute resolution project. Putnam County was later designated an official family court project in Phase 2.

There was significant activity at both the state and local level during Phase 1 of the Family Court Project. In 2000, the family court pilot projects

participated in a Strategic Directions meeting with family court expert Jeffrey Kuhn, attended the National Symposium on Achieving Prompt and Affordable Justice in Family Law Cases, and developed the Family Court Values and Outcomes. The Supreme Court issued four Family Court Rules for the exclusive use of the pilot courts. In June and December each family court submitted detailed Family Court Reports, and the key judicial and administrative officers for each project met at two Family Court Meetings to share program development ideas, exchange sample forms, and problem solve. In 2001, Jeffrey Kuhn conducted two separate site visits with each pilot county, surveyed 300 attorneys and judges regarding family and juvenile law issues and court processing, and conducted three state-wide focus groups on family law issues. In April, representatives of each family court presented a session on family court development for the Indiana Judicial College. In November, the family courts submitted detailed statistics and narrative reports and participated in a Family Court Annual Meeting.

Phase I of the Family Court Project concluded December 31, 2001. Each pilot county submitted a detailed manual including reports, collected data, written policies and procedures, and forms which would enable other counties to duplicate their successful efforts. The manuals were copied for distribution to the Phase 2 counties.

C. Phase 2 (2002-2003)

In Phase 2 of the Family Court Project, the general focus of the project remained the same with some fine-tuning. Phase 2 set the following additional goals: **(1)** mentor new pilot sites to implement family court projects based on models created by the initial pilot counties; **(2)** create models for multiple county case coordination and

service delivery, and **(3)** expand the development of affordable, non-adversarial dispute resolution and service referral programming to at-risk families.

In the fall of 2001 nine counties submitted applications to the Family Court Task Force with proposals for new family court projects. In November, the Supreme Court made the final selection and announced the new pilot projects to begin operation in 2002. **LaPorte and Marion** Counties were selected to develop single county family court projects, and **Montgomery and Boone** Counties were selected as the first multiple county family court project. **Putnam** County was officially designated as a family court pilot project with the responsibility to mentor adjacent **Owen** County in developing non-adversarial dispute resolution programming.

Phase 2 encompasses not only new projects but also the continued support of the original project counties. The Supreme Court provided some

Table 2: Phase 2 Family Court Counties

	County Seat	Population	Number of Judicial Officers	Location
Phase 2				
Putnam	Greencastle	36,019	2	Central west
Owen	Spencer	21,786	2	South West
Boone	Lebanon	46,107	3	Central west
Montgomery	Crawfordsville	37,629	3	Central west
LaPorte	LaPorte	110,106	7	North west
Marion	Indianapolis	860,454	65	Central

reduced funding to the original projects to help them transition to more permanent funding. In addition, the original counties continue to participate in organizational meetings, evaluations and can avail themselves of the family court consulting services. Most importantly, the original counties serve as mentors to the new project counties by helping them deal with legal, administrative, program, and organizational problems that the original counties have already experienced.

Phase 2 was energized by the new family courts. In 2002, the family court consultant conducted

multiple site visits to the individual counties. The original and new pilot counties submitted implementation and six month family court reports, and attended Family Court Meetings in June and December. The original pilot counties hosted "question and answer" sessions and all the projects shared their experiences, concerns, and problem-solving ideas. In 2003, new legislation to help low income families afford Alternative Dispute Resolution spurred an interest in non-adversarial dispute resolution programming. Throughout the summer and fall the family court consultant met with counties interested in applying for family court seed grants, and applications were submitted for consideration for Phase 3. In the late fall, the family court projects submitted narrative reports for the October Family Court Meeting which included an exchange of new programming ideas and a thoughtful assessment of the "Most Significant Aspects of Family Court: What Works and What Doesn't?" All the family court projects filed electronic and hard copies of their family court manuals, which included policies and procedures, forms, and all other documentation necessary to duplicate their programs in other counties.

Phase 2 ends December 31, 2003, and Phase 3 pilot projects begin operation in 2004.

D. The Indiana Focus

Throughout the country there is no common structure or definition of the term Family Court.⁴ Some judicial systems use the term to refer to the court that handles all divorce cases. A more comprehensive Family Court approach includes the filing of all divorce, child protection, delinquency, protective order and probate matters in one court or division, with significant court provided service delivery. A middle ground of innovative programming was developed in the 1990s with a focus on only those families who have multiple

cases pending in the court system or are otherwise in need of specialized services. This was the direction that Indiana took - choosing to develop case coordination and other programming only for the families most in need.

1. Programming

The Indiana Family Court Project initially targeted families with multiple cases pending in the court system and families with complex custody litigation involving child safety issues. The pilot counties created two different models to coordinate multiple case families: **(1)** transfer the family's multiple cases to the same judicial officer (referred to as a *one family-one judge* or *case bundling*), or **(2)** provide basic information on the family's multiple cases to all the judges, attorneys, and parties involved in the family's multiple cases without transferring the cases to the same judge (referred to as *information sharing between multiple courts* or *case tracking*).⁵

Pilot counties also developed models for affordable non-adversarial dispute resolution. These dispute resolution models intentionally involved aspects of case coordination by requiring family court personnel to conduct court record searches on all participants. Record searches ensured that mediators and parties were informed on all the family's pending litigation and outstanding court orders, which enabled more informed decision making during the mediation process and avoided inconsistent orders. Family courts have also used non-adversarial judicial case conferences and status hearings to help parties reach agreement.

Phase 2 family courts adopted models of case coordination and non-adversarial dispute resolution that best met their needs, and created their own innovative programming.

⁴ For discussion on alternative models for family courts, see Carol F. Flango, et al., How Are Court Coordinating Family Cases? (National Center for State Courts, 1999); see also Frances G. Hill, "What's a family court and what's in it for the lawyer?" *Res Gestae* November 2000 at pp. 26-33.

⁵ See Chapter 2 of this report at section B. for more detailed discussion on purpose and process of case coordination models and section C for more details on non-adversarial dispute resolution programming.

Table 3: Case Coordination and Non-Adversarial Dispute Resolution Programming

	Case Coordination Models		Non-Adversarial Dispute Resolution
	<i>One Judge- One Family (Bundling)</i>	<i>Information Sharing Between Multiple Courts (Case Tracking)</i>	
Phase 1			
Johnson	X		Judicial status conferences*
Monroe	X		Paternity/divorce mediation
Porter		X	Paternity/divorce mediation
Phase 2			
Putnam			Facilitation of all case types
Boone	X	X	Planning programming
Montgomery	X	X	Planning programming
LaPorte		X	Facilitation CHINS cases
Marion	X	X	Planning custody mediation
Owen			Facilitation of all case types

The Phase 1 and 2 counties developed specialized programs for at-risk or low income families without access to affordable services or case monitoring. The programming included direct services case management, service referral, specialized assistance for families without legal representation, protective order coordination, truancy reduction, and other innovative programming to more expeditiously and effectively serve families in the court system through a "family focus." The Family Court Project has evolved into a broad range of strategies and programs to serve children and families.⁶

Table 4: Specialized Services for Families

	Services Referral	Direct Services Case Management	Resource Room	Family Assessment	Pro Se Desk	Protective Order Program	Truancy Programming
Johnson	X						
Monroe	X	X					
Porter	X	X	X	X			X
Putnam	X		X		X	X	
LaPorte	X	X					X
Marion	Seeking funds					X	

⁶ See Chapter 2 of this report at section D. for more detailed discussion on special service programming in the family court.

2. Values and Outcomes

In Phase 1 of the Family Court Project, the original pilot counties agreed on the following set of Values and Outcomes. These values are consistent with the broad goal of the Indiana Supreme Court to better serve children and families in our court system.

Value: INTEGRATED INFORMATION SYSTEMS
Outcome 1: Court and parties have knowledge of pending litigation and orders affecting the family
Outcome 2: Court and parties have access to evaluations, assessments, and reports regarding family members, when consistent with rules of evidence and due process of law
Value: COORDINATION AND CONSISTENCY
Outcome 1: Avoid conflicting and redundant orders
Outcome 2: Coordination of services and interagency communication to avoid duplication and gaps in service delivery
Outcome 3: Case monitoring for compliance with court orders
Value: EXPEDITION AND TIMELINESS
Outcome 1: Avoid unnecessary delays in the judicial process
Outcome 2: Reduce number of hearings
Outcome 3: Expedite dispositions
Value: ALTERNATIVE DISPUTE RESOLUTION
Outcome 1: Avoid time consuming and divisive court hearings through alternative dispute resolution
Value: SAFE AND HEALTHY CHILDREN AND FAMILIES
Outcome 1: Availability of assessment and treatment services for children and families
Outcome 2: Avoid relitigation of same issues
Value: TRANSFERABILITY OF FAMILY COURT MODELS TO OTHER COUNTIES
Outcome 1: Cost effectiveness of family court
Outcome 2: Development of forms, procedures, and rules to implement family court concepts

In Phase 2 of the Family Court Project the Supreme Court sought to meet the additional value of effectiveness and expediency in pro se litigation, and the goal of developing multiple county case coordination and service delivery. One of the new goals for Phase 3 is to implement "family focused" drug court programming in 2004, if feasible.

3. Project Individuality and Flexibility

Project individuality is the hallmark of the Indiana Family Court Project. Each pilot county is encouraged to develop case coordination models and service programming consistent with its own needs and resources. One county may designate its pilot project solely as an administrative mechanism to more effectively coordinate families with multiple cases. Another county may focus on affordable non-adversarial dispute resolution in intra-family litigation. A third county may assimilate pre-existing court programming into its pilot project, thus creating a broad family court umbrella over new and pre-existing programming. Therefore, some family court projects may have large budgets and multiple personnel, while others have modest budgets with one employee

or only a part-time employee or contract position. All of these approaches are equally respected and encouraged. Additionally, pilot projects may change in scope, direction, and programming over time.

Although the pilot projects are all unique, each county functions within the grant terms of the Indiana Family Court Project and the Family Court Rules authorized by the Supreme Court.

E. Project Management

The Indiana Family Court Project is a program of the Indiana Supreme Court's Division of State Court Administration. The Division Executive Director, Lilia Judson, with assistance from the Indiana GAL/CASA Director, Leslie Rogers, and her predecessor, Nancy Gettinger, comprise the Division team. The Family Court Task Force, chaired by Honorable Margret G. Robb of the Indiana Court of Appeals, provides guidance to the projects. The Task Force is comprised of five circuit and superior court judges and a representative from the Family Law Section of the Indiana State Bar Association. The project "point person" is a juvenile and family law expert, Frances G. Hill, who works under a contractual relationship as the Family Court Consultant.

A core group comprised of the Task Force Chair, Executive Director of the Division, the GAL/CASA Director, and the Family Court Consultant, provide the ongoing operational management for the project and meet monthly or bi-monthly for that purpose.

The Family Court Consultant is responsible for the day-to-day management of the Family Court Project. The consultant has dual responsibilities of administering the project at a state level and working directly with each of the pilot projects. The state level responsibilities have included:

- Researching alternative models for case coordination throughout the country
- Developing processes for selection of pilot counties
- Monitoring fund distributions to pilot counties
- Facilitating development of Family Court Rules
- Arranging programming for Family Court

Strategic Directions meeting and twice annual Family Court Meetings

- Coordinating with statewide committees (Judicial Domestic Relations and Juvenile Improvement Committees, Indiana State Bar Association, State Pro Bono Commission, State Pro Se Advisory Committee) to integrate development of Family Court Project with already existing programming
- Developing statewide public relations and educational opportunities, including authoring Res Gestae article, presenting at State Bar meetings, arranging Family Court workshop for annual judicial college, and initiating Family Court Web site
- Developing evaluation tools, including statement of Values and Outcomes and standardized data collection
- Obtaining a grant for the evaluation services of an independent family court expert, and facilitating the expert's work in conducting site visits to pilot counties, administering statewide written surveys and leading focus groups on family justice issues

Through regular site visits, telephone consultations, and electronic communications, the Family Court Consultant gives the local projects hands-on assistance with the following tasks:

- Appointing and utilizing a local Family Court Advisory Board
- Determining case coordination models and/or non-adversarial dispute resolution and service programming appropriate to their needs
- Setting eligibility criteria and establishing policies and procedures
- Developing form letters, notices, and orders and implementing data collection
- Conducting legal and community training on family court procedures and programming
- Implementing Family Court Rules
- Identifying best practices for serving families
- Preparing twice annual project reports
- Developing and utilizing participant surveys to evaluate project effectiveness and need
- Developing long-term funding from local government and grant sources

F. Legal Issues and Family Court Project Rules

As the local projects were developing new approaches to handling multiple cases involving members of the same family, it became apparent that certain long standing legal concepts, traditions and rules would need to be re-evaluated and possibly changed in order to accommodate the processes envisioned in the family court concept.

For example, the need to share information about proceedings in other courts with people who are not parties to all the same cases may conflict with Indiana law on judicial notice and strongly held perceptions on confidentiality. Also, Indiana's long tradition and rules providing for a liberal change of judge process would frustrate one of the core models of family court case coordination - *one family-one judge*. Statutes and case law set jurisdictional demarcations which in the context of a family court project could hinder the ability to move all of the family's different types of cases to the same judge.

With these issues in mind, the pilot project participants decided to ask the Supreme Court for authority to deviate from some of the established procedures. The participating judges, family court personnel, Task Force members and chair, and Division representatives recommended a set of four rules that would provide some flexibility to the family court projects. In July of 2000, the Indiana Supreme Court adopted the recommendation and, by order, promulgated four Family Court Project Rules. The order provided that only courts

participating in the family court project could avail themselves of the rules, that the participating courts would have to make an affirmative action in order to adopt the special rules by local rule, and that the special rules expire at a date certain, unless extended by the Supreme Court.

The Family Court Rules were intended to exempt the family court projects from contrary rules which potentially could hinder the coordination processes being tested in the pilot projects. The special rules enable the family court projects to **(1)** hear juvenile matters concurrently with other family law litigation involving the same child; **(2)** use judicial notice to enter orders from the family's other related cases as evidence in the instant case; **(3)** disclose information from confidential juvenile cases to courts and parties involved with the family's other custody litigation; and **(4)** prevent families from transferring their multiple cases away from the family court judge, absent cause.

On January 14, 2002 the Indiana Supreme Court issued an Order Approving and Extending Family Court Project Rules to the original pilot projects and to the new pilot projects through December 31, 2003. The order requires that each pilot county "shall, by order entered in the Record of Orders and Judgments for said court, indicate which if any of the Family Court Project Rules shall be used by that court and shall give notice to all parties or their attorneys that appear in the Family Court Project of such local order and Family Court Project Rules." Most of the family court projects adopted the Family Court Rules as part of their local court rules.

FAMILY COURT PROJECT RULES

(For use only in the Pilot Family Courts)

DEFINITIONS

Family Court. Family Court is the court or courts before which cases involving a family or household are linked together for purposes of case coordination. The individual cases maintain their separate integrity and separate docket number, but may be given a common family court designation. The individual cases may all be transferred to one judge, or may remain in the separate courts in which they were originally filed.

Family Court Proceeding. A Family Court Proceeding is comprised of the individual cases of the family or household, which have been assigned to Family Court.

Rule 1: EXERCISE OF JURISDICTION

The Family Court may exercise jurisdiction over any case involving the family at the same time it exercises jurisdiction over a juvenile case (Child In Need of Services, Delinquency, Status, and Paternity) involving the family.

Rules 2: CONCURRENT HEARINGS

The Family Court may, in the court's discretion, set hearings on related cases to be heard concurrently, take evidence on the related cases at these hearings, and rule on the admissibility of evidence for each cause separately as needed to adequately preserve the record for appeal. This rule applies only when the cases are pending before the same judicial officer.

Rule 3: DESIGNATION OF FAMILY COURT CASE AND CHANGE OF JUDGE FOR CAUSE

Once notice is sent to the parties that a case has been selected for Family Court, no motion for change of venue from the judge may be granted except to the extent permitted by Indiana Trial Rule 76.

Within ten (10) days after notice is sent that a case has been selected for Family Court, a party may object for cause to the Family Court designation.

A motion for change of venue from the judge in any matters arising in the Family Court proceeding or any future cases joined in the Family Court proceeding after the initial selection of cases shall be granted only for cause.

If a special judge is appointed, all current and future cases in the Family Court proceeding may be assigned to the special judge.

Rule 4: JUDICIAL NOTICE AND ACCESS TO RECORDS

Notice of Case Assignment. Within a reasonable time after a case is assigned to Family Court, the court shall provide to all parties in the Family Court proceeding a list of all cases that have been assigned to that Family Court proceeding.

Judicial Notice. Any court having jurisdiction over a case assigned to Family Court may take judicial notice of any relevant orders or Chronological Case Summary (CCS) entry issued by any Indiana Circuit, Superior, County, or Probate Court.

If a court takes judicial notice of:

- (a) a court order, the court shall provide a copy of that court order; or
- (b) a CCS or CCS entry(s), the court shall provide a copy of the entire CCS.

The court shall provide copies of the order or CCS to the parties to the case at or before the time judicial notice is taken.

Access to Records. Parties to a Family Court proceeding shall have access to all cases within the Family Court proceeding, with the exception of confidential cases or records to which they are not a party. Parties may seek access to the confidential cases or records in another case within the Family Court proceeding in which they are not a party, by written petition based on relevancy and need. Confidential records shall retain their confidential status and the Family Court shall direct that confidential records not be included in the public record of the proceedings.

1. Family Court Rules Definitions

The definition section of the Family Court Rules was intended to clarify that if any court in the pilot county hears a case that has been linked to the family's other litigation and assigned to the family court project, that court serves as a Family Court for purposes of that case. The judge of that court may utilize the Family Court Rules as adopted by the pilot county. The definition section further clarifies that the family's individual cases maintain their separate integrity and docket numbers, but all of the family's cases jointly may be referred to as the family court proceeding.

2. Rule 1: Jurisdiction to hear the CHINS and Custody Cases Simultaneously

Rule 1 is primarily applicable to courts using the *one family—one judge* case coordination model. This Rule does not give any court subject matter jurisdiction over case types it does not already have under statutory grants of jurisdiction. It does, however, provide that if a court already has jurisdiction to hear all of the family's case types, that court can hear and issue rulings in multiple family and juvenile court cases involving the same child consistently and at the same time. This avoids the glitch in the case law which, despite recent statutory amendments, still limits the ability of the

court system to create simultaneous and consistent orders for a child who is the subject of a juvenile case and a separate custody case.⁷ The case law has long provided that the court's exclusive jurisdiction in the juvenile case bars the juvenile court or any other court from hearing another type of custody case involving the same child until the juvenile case is closed. The case law also prevented simultaneous rulings in CHINS and guardianship cases involving the same child. Rule 1 overcomes this case law in the family court. The family court judge who has bundled the family's juvenile and custody cases involving the same child into his/her court can have both proceedings open at the same time and can issue consistent and coordinated orders in both cases.

3. Rule 2 Concurrent Hearings

Rule 2 allows a family court to hold concurrent hearings in multiple cases involving the same child. Under this Rule, evidence can be presented at the same time in multiple cases, thereby avoiding the need to bring witnesses and parties to the court on two separate occasions. The Rule does not consolidate the cases, and the court must still create a separate record in each case and adhere to evidentiary and legal standards applicable to each case type. While concurrent hearings may not be

⁷ IC 31-30-1-12 (effective 1999) allows a court to hear a divorce custody modification while a CHINS or delinquency case is open regarding the same child. IC 31-30-1-13 (effective 1999) allows a court to hear a paternity custody modification case while a CHINS or delinquency case is open regarding the same child. See *Reynolds v. Dewees*, 797 N.E.2d 798 (Ind.Ct.App.2003) (court can hear custody case modification while CHINS case is open involving the same child). Also, 2002 legislation overcomes some jurisdictional impediments to hearing juvenile CHINS and guardianship cases involving the same child at the same time. See IC 31-30-1-1(10); IC 31-30-2-1(d)(e)(f), IC 31-34-21-7.7. These laws grant the juvenile court jurisdiction in guardianship cases involving a CHINS child who is the subject of a permanency plan which recommends guardianship. However, both the custody laws and the guardianship laws are very limited in scope and do not allow the same court to hear all of these case types in all situations involving the same child. Therefore in all situations not specifically covered by the statutes, it is essential to utilize Family Court Rule 1 or else the following case law prohibiting simultaneous hearings applies. See *Fox v. Arthur*, 714 N.E.2d 305, 308 (Ind.Ct.App.1999) (Greene Circuit Court lacked jurisdiction to accept transfer of out-of-county dissolution custody modification or to consolidate dissolution custody modification with pending CHINS involving same child because Greene Juvenile Court had exclusive jurisdiction once CHINS petition was filed); *In re B. W.*, 709 N.E.2d 370, 373 (Ind.Ct.App.1999) (Marion County judge acting under juvenile jurisdiction in CHINS case lacked authority to consolidate pending divorce modification proceeding with CHINS case involving same child; the juvenile court had no jurisdiction in divorce custody proceeding because jurisdiction remained with court that issued the dissolution decree, and Indiana Trial Rule 42(D) did not permit consolidation of these cases for resolution of common issues at trial); *In re C.S.*, 713 N.E.2d 863 (Ind.Ct.App.1999) (judge with probate and juvenile jurisdiction could not rule in child's guardianship case until judge closed the CHINS case involving the same child); *Alexander v. Cole*, 697 N.E.2d 80, 82-83 (Ind.Ct.App.1998) (divorce court is without jurisdiction to rule on custody modification once CHINS petition is filed in juvenile court regarding same children); *Hemingway v. Sandoe*, 676 N.E.2d 368, 372 (Ind.Ct.App.1997) (juvenile court has no jurisdiction in dissolution, and therefore no jurisdiction to decide custody once CHINS or termination proceedings are closed); *P.B. v. T.D.*, 504 N.E.2d 1042, 1043 (Ind.Ct.App.1987), modified on rehearing on other grounds 507 N.E.2d 992 (Ind.Ct.App.1987) (once CHINS proceeding is initiated, divorce court lacks jurisdiction over a change of custody petition regarding the child who is the subject of the CHINS proceeding, until juvenile court either discharges child from CHINS proceeding or juvenile court correctly transfers CHINS case to divorce court).

prohibited by existing procedural trial rules, Rule 2 clarifies that they are permissible.

4. Rule 3: Notice of Family Court Designation, Objection to Assignment to Family Court, and Change of Judge

Rule 3 has two provisions: **(1)** notice of the selection of a case for family court and 10 days to object to the selection, and **(2)** change of judge for cause. Although the original focus in drafting the rule was on the change of judge issue, many pilot counties use Rule 3 primarily for the notification purpose. These courts report that attorneys and parties were more cooperative about the selection of cases (generally referred to as the assignment to the family court project) because they received the written notice and had ten days to object. They appreciated the time to research the family court project and discuss the potential consequences of the assignment with their clients. Although projects reported that parties and attorneys occasionally expressed concern upon notification of the family court assignment, no objections to the assignments were filed.

With regard to the Change of Judge focus of Rule 3, it is important to note that the provision in paragraph three (allowing a Change of Judge motion only for cause) may be used only if the court complies with the conditions of the other paragraphs of that rule. Paragraph one and two require the Family Court to give notice to the parties that their cases have been designated for the family court project and that the parties have ten days to object to the designation to family court for cause.

Rule 3 is applicable to the *one family–one judge* model of case coordination (also referred to as the *case bundling* model). The Rule was intended to avoid an automatic Change of Judge because a

party is dissatisfied with a ruling in one of the family’s multiple cases. The philosophy of the *one family–one judge* model is to maintain judicial consistency and accountability in the family’s multiple cases.

Under Rule 3, if the time limitation has not expired under Ind. Trial Rule 76 as to the individual cases initially being assigned to the family court project, a Change of Judge motion can be granted without cause. However, a Change of Judge motion can be granted only for cause on new cases that are joined to an already existing family court proceeding, even if the Trial Rule 76 time requirement has not expired as to the new case.

The participants in the Monroe County pilot project experienced some concern with Rule 3 when an Involuntary Termination of Parental Rights Case was filed regarding a child whose CHINS and paternity cases had earlier been assigned to the county’s *one family–one judge* court project. Although Rule 3 was intended to allow a motion for Change of Judge only for cause in new litigation added to an existing family court proceeding, counsel for the office of family and children (OFC) did not oppose the respondent parent’s motion for automatic Change of Judge. The OFC attorney was hesitant to use Family Court Rule 3 because it conflicts with the *Gosnell*⁸ case, which applies the automatic Change of Judge provision in T.R. 76 to termination of parental rights cases.

5. Rule 4: Judicial Notice and Confidentiality of Juvenile Records

Rule 4 allows a pilot court to take judicial notice of court orders (or entries in the Chronological Court Summary) in the family’s multiple cases, and thereby admit those orders or CCS entries as evidence in the instant case. The Rule is in contravention of case law, which generally prohibits

⁸ See *State ex rel. Gosnell v. Cass Cir. Court*, 577 N.E.2d 957 (Ind.1991) (juvenile code provision requiring good cause for change of judge in termination of parental rights cases, now codified at IC 31-32-8-1, is in conflict with trial rule and is void: motion for change of judge shall be granted without proof of cause).

a judge from taking judicial notice of orders from other cases, even when the same judge presides in all of the cases.⁹ In theory a judicial notice rule may not be needed because the parties can admit into evidence certified copies of court orders from other cases; however, parties may not be aware of such orders or may choose not to offer them as evidence for tactical reasons. Rule 4 gives the court the ability to identify other court orders involving the family and enter them as evidence even when the parties are unable or unwilling to do so on their own. Taking judicial notice of an order does not establish that the facts supporting the order are true, but merely establishes that a court issued a specific order.

Rule 4 requires that the pilot court provide to all of the parties to the family court proceeding a list of all cases that have been assigned to family court. This places all parties on notice regarding the existence of those cases and obligates conscientious attorneys to review those related case files, or at least to adequately discuss the potential responsibility with their clients. Rule 4 also requires the court to give copies of the orders or the Chronological Court Summary (CCS) entries to the parties before, or at the time, the court takes judicial notice of the orders or the CCS entries.

There has been some concern about the breadth of judicial notice. It was intended when the Family Court Rules were drafted that judicial notice was applicable to court orders from other cases, not to custody evaluations or other informational reports containing hearsay. While such reports may be very informative and avoid duplication of effort, due

process prevents wholesale admission of those types of documents through judicial notice.

Rule 4 also deals with access to confidential records. A confidentiality problem may arise when the parties to all of the family's multiple litigation are not the same and some of the litigation involves confidential juvenile cases.¹⁰ This is not an uncommon occurrence. For example, Dad is not a party to the CHINS case involving Mom's other children and her new live-in boyfriend; however safety issues related to Mom's boyfriend may be central to Dad's divorce visitation case involving Dad's children by Mom. Dad would like to have access to the CHINS record to determine whether it is safe for his children to visit in Mom's home. Rule 4 states:

Parties may seek access to the confidential cases or records in another case within the Family Court proceeding in which they are not a party, by written petition based on relevancy and need. Confidential records shall retain their confidential status and the Family Court shall direct that confidential records not be included in the public record of the proceeding.

The juvenile court may deem it consistent with the best interest of the child to allow access to juvenile records to all parties to the family court proceeding and issue a standardized order accordingly.

⁹ See *Lake County Division of Family and Children Services v. Charlton*, 631 N.E.2d 526, 529 (Ind.Ct.App.1994) (Improper for court to take judicial notice in CHINS case of support issues heard by same judge in paternity case involving the family members); *Matter of A.C.B.*, 598 N.E.2d 570 (Ind.Ct.App.1992) (Court cannot take judicial notice of ruling in father's paternity proceeding in the termination of parental rights case). But see *Kennedy v. Jester*, 700 N.E.2d 1170, 1173 (Ind.Ct.App.1998) (No error to take judicial notice of pending murder appeal in civil case seeking payment of insurance proceeds as party adversely affected by judicial notice acknowledged fact in question to trial court); *State v. Hicks*, 525 N.E.2d 316, 317 (Ind.1988) (Trial courts have sometimes properly taken judicial notice of proceedings in other cases in the same or other courts, contrary to general rule prohibiting this); Ind. Evidence Rule 201 (Rule allows trial court to take judicial notice of decisional law, but does not address or prohibit taking judicial notice of court orders).

¹⁰ See IC 31-39-1-2 (Juvenile court records are confidential and available only in accordance with IC 31-39-2, and court shall take appropriate actions to protect juvenile court records from unauthorized disclosure). But see IC 31-32-6-2 (Juvenile court shall determine whether public is excluded from juvenile hearing on a case-by-case basis).

G. Project Funding and Costs

In the two biennium budgets covering the period of 1999 to June 2003 the Indian Legislature appropriated a total of \$800,000 for four years of the Family Court Project, or approximately \$200,000 per year. Also, during this period the Division of State Court Administration received a grant of \$40,000 from the Criminal Justice Institute to hire an outside consultant to conduct an Independent Evaluation of the Family Court Project in 2001.

Table 5: Indiana Family Court Project Budget and Expenditures for Phase 1 and 2

Phase 1 Family Court Actual Income and Expenditures <i>(fiscal years July 1999 - June 2001)</i>		Phase 2 Family Court Biennium Budget <i>(fiscal years July 2001 - June 2003)</i>	
Actual Income		Budgeted Income	
\$400,000.00	Legislative/Supreme Court funds designated to Family Court Project	\$400,000.00	Legislative/Supreme Court Funds designated to Family Court Project
\$40,000.00	JAIBG Federal Grant awarded through Indiana Criminal Justice Institute for Independent Family Court Project Evaluation	\$400,000.00	Total
Actual Expenditures		Budgeted Expenditures	
\$302,040.85	Total disbursements to family court pilot counties	\$235,000.00	Total disbursements to family court pilot counties
\$80,000.00	Project Consultant Contract	\$75,000.00	Total disbursements to original pilot counties as transition funds
\$17,959.15	Consultant travel, phone and copy expenses, Strategic Directions Meeting Costs, Task Force and Family Court Meeting Expenses	\$60,000.00	Project Consultant Contract
\$40,000.00	Consultant Fee to Jeffrey Kuhn under JAIBG evaluation grant	\$20,000.00	Consultant travel, phone, and copy expenses
\$440,000.00	Total	\$10,000.00	Task Force and Family Court Meeting Expenses
		\$400,000.00	Total

The greatest expense in the Family Court Project budgets is the distribution to the pilot family court counties. The remaining project expenses averaged \$50,000 or less per year, and generally included the contract costs for the family court consultant and independent evaluator, the costs of materials, travel, communication, and meeting expenses, and the expenses of the Family Court Task Force and the twice-annual Family Court Meetings.

1. Family Court Distribution to Pilot Counties and Additional Funding Sources

The bulk of family court funding has gone directly to the pilot counties. Table 6 shows that a little more than \$150,000 was distributed to the pilot counties per year for the first four years of the family court project.

Table 6: Family Court Grant Distributions Per County

	1999-00	2000-01	2001-02	2002-03	2003-4	2004-5	TOTALS
Phase 1 Counties							
Johnson	\$45,741	\$44,785	\$12,500	\$12,500	\$6,000	\$4,000	\$125,526
Monroe	\$50,956	\$50,000	\$12,500	\$12,500	\$6,000	\$4,000	\$135,956
Porter	\$55,756	\$54,800	\$12,500	\$12,500	\$6,000	\$4,000	\$145,556
Phase 2 Counties							
Putnam				\$9,000	\$3,000	\$2,000	\$14,000
Owen			\$10,000	\$1,000	\$3,000	\$2,000	\$16,000
Boone-Montgomery			\$30,000	\$30,000	\$12,000	\$10,000	\$82,000
LaPorte			\$32,500	\$32,500	\$12,000	\$10,000	\$87,000
Marion			\$45,000	\$45,000	\$20,000	\$20,000	\$130,000
Phase 3 Counties							
Counties not yet selected					\$201,000	\$197,000	\$398,000
TOTALS	\$152,453	\$151,586	\$155,000	\$155,000	\$269,000	\$253,000	\$1,134,03

The distribution to the counties for Phase 3 of the Family Court Project will be \$269,000 in fiscal year 2003-4 and \$253,000 in fiscal year 2004-5. This is a total distribution of \$522,000 for the two year period, or slightly more than \$250,000 per year. This funding will include seed grants to new counties and transition funding to the existing project counties. The increased funding for Phase 3 is partially attributable to a \$60,000 grant, renewable for a second year, from the Court Improvement Project. Under the direction of Justice Frank Sullivan Jr, the Executive Committee of the Court Improvement Project (CIP) approved this funding for distribution to new family court projects that meet the child abuse and neglect standards and requirements for CIP funding.

Table 6 illustrates the commitment of the Supreme Court and the legislature to fund new family court counties every two years, and to provide reasonable transition funding to help all the family courts gain a permanent foothold in their communities to ensure

long-term programming. The total distributions directly to the pilot counties will exceed one million dollars by the close of fiscal year 2005.

The Family Court grant distributions from the Supreme Court are different from traditional grant funds in that the pilot counties have significant flexibility to modify the use of those funds upon request to the Division of State Court Administration. Also, pilot counties are not required to expend the funds by a set date. This allows counties to carry funds over from year to year, and to take time in developing programming that is most appropriate to their needs.

In addition to the Family Court grant funds, the pilot counties were encouraged to seek other grants and local government funding. Table 7 reflects the additional sources of income the pilot counties were able to generate, including amounts committed through 2003.

Table 7: Other Funding Sources for Pilot Counties Obtained between 2000 and 2003

	Court Improvement Project	Criminal Justice Institute	County Government	Probation User Fees	Office of Family & Children	Community Mental Health	Community Grants	Party Pay	TOTALS
Johnson			\$15,883						\$15,883
Monroe			\$44,000						\$44,000
Porter	\$109,449	\$98,957	\$87,158	\$20,000		\$98,957	\$107,421		\$521,942
Puamam	\$86,200				\$10,000		\$12,000	\$4,740	\$112,940
LaPorte	\$19,900								\$19,900
Marion		\$7,000							\$7,000
Owen					\$10,000				\$10,000
TOTALS	\$215,549	\$105,957	\$147,041	\$20,000	\$20,000	\$98,957	\$119,421	\$4,740	\$731,665

Some of the pilot counties were successful in obtaining federal grants, including funding from the Court Improvement Project and the Indiana Criminal Justice Institute for at-risk youth and delinquency prevention. Other major sources of funding are community grants, community-court collaborations, and local government. Community funding is further discussed under section H. below.

2. Personnel Costs and Reallocation of Resources

The pilot projects have expended funds for lap top computers, mileage reimbursement, mediation training, office equipment, supplies, copying, postage, phone, and other anticipated administrative expenses. However, the bulk of administrative supplies and space needs have been covered by in-kind contributions from local court systems.

The major expense for each of the pilot projects has been staffing. The pilot projects vary significantly in the number and type of staff members.

Table 8a: Phase 1 – Pre-Existing and Newly Created Staff and Contract Positions Per Project County

County	Already Existing Staff	New Positions	Mediation/Facilitation
Johnson	Court Administrator time partially reallocated to Family Court Development	Family Court Case Manager \$22,441.00	
Monroe		Family Court Coordinator \$36,350.00	Paternity Mediation Project uses local attorney volunteers and law students
Porter	Juvenile Systems Coordinator position fully redesignated to Family Court Supervisor \$32,460.00 Truancy Coordinator (Project Attend) \$19,873.00 Special Services Probation Officer \$19,873.00	Family Court Case Manager \$31,538.00 Community Services \$18,000.00 Special Services Case Manager \$21,888.00 (Paid by Mental Health Center) Probation clerk/ Office Manager \$21,959.00	Local family law mediators paid \$95 per hour per case in divorce mediation Family Court staff are trained as mediators and provide divorce mediation at no additional cost Paternity Mediation Clinic uses local attorney volunteers and law students, and pays local attorneys \$60 per hour when needed

Table 8b: Phase 2 – Pre-Existing and Newly Created Staff and Contract Positions Per Project County

County	Already Existing Staff	New Positions	Mediation/Facilitation
Putnam		Part-time Family Court Administrator 10 hours per week at \$60 per hour	Local family law mediators paid \$100 per hour per case
Owen		Part-time Family Court Administrator 10 hours per week at \$60 per hour	Local family law mediators paid \$100 per hour per case
Boone/Montgomery		Part-time Family Court Coordinator 25 hours per week at \$15 per hour	
LaPorte	Director of Juvenile Services partially re-designated to Family Court Coordinator position	Part-time Family Court Case Manager \$15,000.00 per year on contract	Family Court Coordinator serves as facilitator
Marion		Family Court Coordinator \$36,000.00 plus benefits	

Some staff positions were newly created, but many involved the redesignation of responsibilities within already existing staff positions, and/or some other reshuffling of programs within court and probation budgets. As can be seen from Tables 8a and 8b, Johnson, Porter, and LaPorte pilot counties used already existing court staff persons to create their family court projects. In LaPorte County the responsibilities of the full-time Director of Juvenile Court Services were partially reallocated to the development of the family court project. The Director took on an additional title of Family Court Coordinator, and also assumed the responsibility of creating and delivering direct services in the new facilitation (non-adversarial dispute resolution) programming for CHINS cases. In Johnson County the Court Administrator was designated as the point person to set up the policies and procedures and administrative processes for the family court pilot project, in addition to the administrator's already existing responsibilities. In Porter County the existing Juvenile Services Coordinator position was converted to the Family Court Coordinator position, and later that position was moved into the probation budget and retitled Family Court Supervisor. Porter County also integrated previously existing truancy programming and a special service probation officer into its family court project. This was based on Porter County's determination that the "family focus" in the family court project was most appropriate for this pre-existing programming.

Tables 8a and 8b illustrate that the cost of new personnel varied significantly depending upon whether the staff position was full-time or hourly. Although not specifically reflected in the tables, the cost of staff positions also varied depending upon the level of education and work experience sought. Pilot projects varied in seeking employees with expertise in court reporting, law, mediation, probation, or social work. Staff costs also varied depending upon the job responsibilities for the family court staff position, which ranged from court reporting, court administration, program development, grant writing, legal research, and/or social service delivery. The pilot projects generally chose to label staff positions as coordinator, administrator, or case manager but there is no standardized definition for those titles.

Tables 8a and 8b also reflects that some projects expended funds for non-adversarial dispute resolution

(labeled mediations/facilitation), and others provided these services through volunteers or family court staff. Putnam, Owen, and Porter Counties pay local attorneys at a rate of approximately \$100 per hour for mediation and facilitation services on a case-by-case basis. Porter and Monroe Counties use law students and volunteer attorneys for some mediation services. Porter and LaPorte Counties utilize family court staff members to provide some mediation services.

H. Community Involvement and Funding for Pilot Projects

Community involvement has been essential to pilot project development and ongoing funding. Each pilot county has formed a local Family Court Advisory Board of key community representatives. These Advisory Boards provide input and accountability for pilot projects and also ensure that the communities are aware of why and how projects function.

In addition to the local Advisory Boards, many of the pilot counties have utilized pre-existing community coalitions focused on the needs of children and families. Some examples of this include Johnson County's coalition of government and not-for-profit agencies called ACT, Monroe County's Wrap Around network of community service providers, and Porter County's Juvenile Summit. These coalitions embrace the family approach for serving children and youth. They work with pilot courts to help address the needs of families in the court system.

The family court projects have spawned new court-community collaborations. An example is Porter County's paternity mediation clinic that utilizes Valparaiso Law School students and local

attorneys to help mediate custody and visitation cases for indigent parties. The Monroe County pilot project collaborated with the Indiana University School of Law to develop a paternity mediation program using volunteer attorneys, law students, and the community conflict resolution group.

Court-community collaborations are a vital source for funding family court project programs. A few of the many examples of collaborative efforts to obtain funding for pilot projects are noted here. The Marion County family court pilot project collaborated with Child Advocates, Inc. to obtain funding from the Criminal Justice Institute. The Putnam County pilot project collaborated with the Youth Development Commission to obtain a Putnam County Community Foundation grant. In Porter County the local mental health center helped fund the initial family court coordinator position. Later the mental health center and the pilot project wrote a joint grant to hire a liaison to work with at-risk and high-risk families in the court system. Porter County also collaborated with the local Youth Service Bureau in developing mediation resources and other programs.

Family Court judges work closely with County Council members and Commissioners to ensure their understanding of the long term benefits and potential savings of family court coordination. The original pilot projects (Johnson, Monroe, and Porter) have received some local government funding for the salaries or benefits of pilot court staff members. In Putnam and Owen Counties the local Offices of Family and Children have contracted for family court facilitation services to resolve complicated custody and child protection issues outside of the courtroom.

Family Court Programming:

Case Coordination, Non-Adversarial Dispute Resolution, and Specialized Services

A. Overview

Each of Indiana's family court projects is unique. While the focus of the original pilot counties was on developing models to coordinate the litigation of families who have multiple cases in the court system, the Family Court Project has subsequently embraced a wide range of programming to meet the needs of children and families in the court system. Experience has shown that both large and small counties have a need for, and can develop, some aspect of case coordination and service delivery to better serve families. The Indiana Family Court Project is not locked into any one case coordination model or service program. It offers a variety of program and process options, and the opportunity to develop a more cooperative, "family focused" approach for serving families and children.

Moreover, the case coordination and other programming are flexible and easily transferable to new pilot counties. The models developed by the original pilot counties serve as a base to build on, but each county adapts the framework to its needs, resources and legal culture. The pilot county projects are not static. The counties delete or add programming as their needs and resources change. They transfer existing programs in or out of pilot projects as it seems appropriate to their overall family court approach.

B. Case Coordination Models for Multiple Case Families

1. Why is Case Coordination Needed?

The impetus for the Family Court Project was the need to coordinate the litigation of families who have more than one case pending in the legal system. Statistics and anecdotal experience from the pilot projects, as well as national research, confirm the existence of significant numbers of families who have multiple cases in the court system, and the potential harms from failing to coordinate these cases.

a. The Incidence of Multiple Case Families and Most Common Case Types

An underlying assumption of the Indiana Family Court Project is that multiple case families exist in significant enough numbers to warrant specialized court processing. The data in Table 9 show that families assigned to the pilot projects do have a significant incidence of multiple cases.

Table 9: Number of Court Cases Per Family in Project Counties

	2000 Families	2000 Cases	2001 Families	2001 Cases	2002 Families	2002 Cases	Total Families	Total Cases	Average cases Per Family
Phase 1									
Johnson	37	93	44	124	42	104	123	321	2.609
Monroe	23	91	25	81	28	63	76	235	3.092
Porter	40	176	61	231	27	81	128	488	3.81
Phase 2									
Putnam	11	17	49	57	42	49	102	125	1.22
Owen					4	4	4	4	1
Boone					26	69	26	69	2.65
Montgomery					12	59	12	59	5.92
LaPorte					42	249	42	249	5.72
Marion					51	202	51	202	3.96
Totals	111	377	180	493	274	880	565	1,750	3.09

The pilot project families average between 2.65 court cases per family in Boone County to 5.92 cases per family in Montgomery County, with the

mode for the seven largest pilot counties being 3.78 cases per family. This calculation does not include the smallest counties of Putnam and Owen that focus primarily on non-adversial dispute resolution.

The data in Table 9 does not show the total number of multiple case families within each court system, or in other words, how often all families (not just pilot project families) have more than one case in the court system. The Monroe County family court project conducted a study to address that issue. In 2000, Bonnie Austin in the Administrator's office of the Monroe County Circuit Court conducted a base line study to determine the number of current and disposed cases for each family in the forty-one new CHINS (Child In Need of Services) cases filed over a six month period beginning in September of 1999. The study required Ms. Austin to review the CHINS records and other information sources to determine the exact names (and other identifiers such as date of birth, social security, and address) of each family member for the subject CHINS child, and then to research the separate juvenile, civil, and criminal databases to see if those persons had pending cases in the court system or cases that had been disposed since 1993. The results showed that four of the families had only one case pending in the Monroe Court system, but the remaining families had between three to six cases pending. These pending cases included divorce, paternity, delinquency, protective orders, guardianships, criminal, and additional CHINS cases. Also, most of the families had substantial numbers of cases that had been disposed between 1993 and 2000. Three families had only one disposed case, but most of the families had five or more disposed cases and five families had eleven or more disposed cases.

Monroe County's data is not inconsistent with the 1992 research conducted in Oregon by the National

Center for State Courts, in which the authors concluded:

...there are a sufficient number of related cases involving families to warrant the effort necessary to coordinate case processing. Court records in three different sites found that 41 percent of cases involving families had related cases. Obviously this proportion depends on how one defines a related case and how far back in time one looks, but there is no doubt that the proportion of related cases is high.¹¹

Hunter Hurst III, director of the National Center for Juvenile Justice, reported that in a random sample of 440 divorce, dependency and delinquency cases in Salt Lake County, Utah, a total of 53% or 235 of those 440 cases had had a related family case of some other type within the past five years. He noted that those 235 cases had a total of 419 related cases.¹²

The results of the written surveys of three hundred Indiana judges and attorneys provide anecdotal evidence regarding the incidence of multiple case families. The research was conducted by family law expert Jeffrey Kuhn in the spring of 2001 as a part of an independent evaluation of the Indiana Family Court Project. The survey responses showed that many Indiana judicial officers and attorneys perceive that the litigants and clients they serve have a significant likelihood of being involved in other pending litigation.¹³

Additionally, site interviews in Indiana's pilot counties consistently included real life examples from attorneys, judges, CASAs, and service providers about families with multiple pending cases.

Table 10 shows the Indiana pilot project data on the types of cases that most frequently occur in multiple case families.

¹¹ Victor E. Flango, "Creating Family Friendly Courts: Lessons from Two Oregon Counties," 34 *Family Law Quarterly* 118 (Spring 2000).

¹² Hunter Hurst III, "Judges in Musical Chairs: Bad News for One Family/One Judge," *Juvenile and Family Justice Today* 37 (summer 1998).

¹³ See Chapter 4 of this report at section B. 1 for further discussion of the survey results.

Table 10: Most Common Case Types in Multiple Case Families

	Johnson	Monroe	Porter	Putnam	Boone	Montgomery	LaPorte	Marion	Totals
CHINS	60	91	126	12	18	7	55	94	463
Termination of parental rts.	9	7	5	3	1		1		26
Delinquency	25	12	24		2	14	38	3	118
Juvenile Status	1				2			1	4
Juvenile Miscellaneous	6				2	3			11
Paternity	51	30	23		2		17	44	167
Guardianship	22	7	4		1	2	1		37
Adoption	8							1	9
Divorce	65	37	30	4	1	2	14	24	177
Support Enforcement	36		2						38
Civil Miscellaneous							5		5
Civil Protective Order	32	8	21		1	1	7	16	86
Domestic Violence Crimes			78	1	7	2		11	99
All other Crimes	2	25	123	2	22	23	68	8	273
Other	3	3			1	5	5		17

Five of the pilot counties report that CHINS cases are the most common case type in their multiple case families, and three counties report that criminal cases are the most common case type. This variance between the counties may be caused by several factors, but the most significant is whether the counties include criminal cases in their family court projects. Some pilot counties include all of the family's criminal cases, others include some or none. Aside from the CHINS and criminal cases, the other case types that frequently occur in multiple case families are divorce, paternity, delinquency, and protective order cases.

b. Judicial and social harms from lack of case coordination

Regardless of the number of multiple case families, the potential harm and inefficiency in multiple case situations is significant. Failure to

coordinate a family's multiple cases can result in redundancy in hearings, service gaps, and inconsistent orders. Perhaps the most frightening problem is uninformed decision making. For example, if the attorneys or pro se parties choose not to present evidence in the divorce custody case regarding the parents' domestic violence or child neglect cases then the judge who must make the divorce custody decision is probably the least informed person in the courtroom. Indiana law does not authorize the judge on his own motion to take judicial notice of the rulings

from related cases even though the information may be public record.¹⁴

Another problem with multiple case family situations is the potential for jurisdictional and other due process errors, and the resulting waste of judicial time in trying the same issues twice in two related but technically different legal cases.¹⁵

c. At-risk social factors in multiple case families

The pilot counties collected data on each project family on a wide range of social factors relevant to child safety and stability. Counties were not able to obtain data regarding certain social factors for some families. Data collection was not intended to be invasive for families or overly time consuming for the projects. For purposes of the data collection, the family court personnel determined whether the family had a particular social factor based on the pleadings, rulings, or other documents in the

¹⁴ See Chapter 1 of this report at section F.5. for Family Court Rules and case law on judicial notice.

¹⁵ For example, jurisdictional error occurs when an original custody case is heard at the same time a CHINS or delinquency action is pending regarding the same child. This jurisdictional issue is discussed in the text and in footnote 7 in Chapter 1 of this Report at section F.2. on Family Court Rules. Even when there is no jurisdictional problem with multiple cases involving the same child proceeding in different courts at the same time, there can be very detrimental and wasteful effects from this multiple litigation. The Court risks uninformed decision making and the parties face loss of rights when they are not adequately informed of, or allowed to participate in both cases involving the same child. Detrimental multiple litigation occurs, for example, when separate adoption petitions are filed for the same child in two different courts, or an adoption petition and a paternity petition on the same child are filed in two different courts. See *In re Adoption of I. K.E.W.*, 724 N.E.2d 245 (Ind.Ct.App.2000) (trial court not obligated to consolidate competing adoptions involving the same child).

family's multiple court files. Some family court personnel also consulted other available sources of information, such as child abuse or neglect reports or domestic violence police reports forwarded to the pilot project. Social factors were determined by personal contact with family members only in the pilot projects that conducted such interviews.

2. Alternative Models for Case Coordination

The original pilot counties implemented alternative models for coordinating the litigation of families who have more than one case pending in the court system at a time. The case coordination models used by the pilot counties are set out below.

Table 11: Incidence of At-Risk Social Factors in Project Families

	Johnson	Monroe	Porter	Putnam	Boone	Montgomery	LaPorte	Marion	Owen	Totals
Substance Abuse	9	31	55	15	13	11	19	–	–	153
Mental Health	6	16	18	16	3	1	12	8	–	80
Parent Conflict	56	25	79	–	2	2	3	12	1	180
Domestic Violence	21	17	62	–	7	2	9	13	1	132
Child Neglect	11	34	51	8	19	4	17	39	–	183
Child Abuse	4	26	33	–	18	3	19	–	–	103
Adult Probation/Jail	–	–	108	–	13	6	38	5	–	170
Housing Issues	4	16	12	–	–	–	–	–	–	32
Low Income	–	58	62	37	–	–	34	–	1	192
Single Parent	–	–	58	–	–	–	22	–	1	81
Education Issues	2	3	9	–	–	–	–	–	–	14
Child Behavior Issues	17	13	12	–	–	–	–	–	–	42
Child Out-of-Home Placement	–	–	33	–	16	5	25	41	–	120
Juvenile Detention	–	–	22	–	2	3	–	–	–	27

Data on the families admitted into the family court projects demonstrates that these families have a high incidence of social factors that may place their children at-risk for harm or instability, or their children may already be experiencing harm. Although the data does not show the incidence of these risk factors in the total court population, it is still clear that the multiple case families selected for family court processing have a high number of at-risk social factors. Having multiple court cases, in and of itself, may place a family at-risk for instability, given the potential loss of income from multiple court proceedings and attorney fees, and the stress of multiple court orders for services or treatment.

a. One Judge-One Family

(also referred to as case bundling)

The *one family–one judge* model, also referred to as *case bundling*, involves transferring some or all of the family's multiple cases to the same judge, with the goal of expediting scheduling and case resolution for families and attorneys and coordinating orders. The cases are not usually consolidated, but maintain their own separate identities. The judge can use Family Court Rule 4 to take judicial notice of the orders in the family's multiple cases. Custody, visitation, no-contact, and service orders can be fully coordinated.¹⁶ When appropriate, hearings in the family's multiple cases can be scheduled for the same time (concurrent hearings). This avoids multiple trips to the court house for parties and witnesses.

¹⁶ See Chapter 1 of this Report at section F.5. regarding Family Court Rule 4.

When a family is assigned to the family court project using this model, the files of the family's multiple cases are transferred to the same judge in compliance with the Indiana Rules of Trial Procedure and local rules regarding case transfers. The multiple court files are placed in a common folder or rubber banded together, hence the term *bundled*. When one case is scheduled for hearing, the other *bundled* case files are placed before the judge on the bench.

If the family's multiple cases are already before the same judge, *bundling* may still be needed because the cases are not automatically coordinated for purposes of scheduling and consistent resolution. For example, this may occur when the child's CHINS (Child In Need of Services) case and paternity custody case are originally filed in juvenile court before the same judge. If the cases are assigned to the family court project, it is more likely that they will be scheduled for hearings concurrently or consecutively, avoiding multiple trips to the courthouse for the parents. Also, if the multiple cases are both assigned to family court the judge may use Family Court Rule 4 to take judicial notice of the orders in both cases.

The *one family—one judge* model was initially used in Johnson and Monroe Counties, but has been adapted for use in Boone, Montgomery, and Marion Counties. Some of the pilot counties have added innovative aspects to the original model: **(1)** combined status conferences and **(2)** coordinated litigation of the juvenile and criminal cases involving the same incident of child abuse or neglect.

Combined status hearings in family's multiple cases. Johnson County schedules multiple case status hearings within ten days of the transfer of the family's cases to the family court. All the attorneys and necessary parties attend the hearing to identify issues, schedule necessary evaluations or other required processes, check for inconsistent orders between the multiple cases, set future hearing dates, and resolve issues when possible. Boone County also uses status hearings or case conferences in *bundled* cases. While it may be cumbersome to give

notice of the combined status hearing to all the attorneys, pro se parties, and child advocates involved in the cases, the hearing can be a very helpful tool in expediting cases. Much can be accomplished by having the key players for all the cases together in the courtroom at an early point in the litigation.

Bundling criminal and CHINS cases involving same incident of child abuse or neglect. Coordinating the CHINS and criminal cases involving the same incident of child abuse or neglect may include the combined status hearing process discussed above, but it has additional aspects. Dual litigation of CHINS and related criminal cases has long been a sore point in Indiana. Juvenile courts often delay the CHINS case until the criminal case in another court is completed to avoid potential violations of the parent's Fifth Amendment Right to remain silent. The CHINS case waits in limbo while criminal discovery and plea negotiations may proceed slowly. Boone County has addressed this concern through its family court project. When the companion criminal case is filed in the Boone Circuit Court, which already has jurisdiction in the CHINS case, the Circuit Court *bundles* the cases to the family court project to facilitate future coordination of the cases and a combined status hearing. If the criminal case is filed in the Superior Court, the Circuit Court judge *bundles* the criminal and CHINS cases in a family court proceeding and transfers the criminal case to his court. These transfers are made with the agreement of the Superior Court judge and with appropriate notice to the parties. If the CHINS and criminal cases are not resolved in the combined status hearing, the Circuit Court judge hears the cases separately. However, the judge is responsible for both cases and thus has the ability to expedite and coordinate the hearings as appropriate. Nothing in the law prohibits one judge from hearing both cases. There may also be time savings in appointing the same public defender in these multiple cases.

The Monroe County pilot project also *bundles* some criminal and CHINS cases involving the same incident of child abuse and neglect before the same

judge. Johnson County has conducted some combined status hearings on related CHINS and criminal cases, at the request of the attorneys and as deemed appropriate by the family court. In Johnson County if the criminal and CHINS cases are not resolved by agreement in the status hearing, the criminal case is processed before another judge in the criminal court.

The benefits and concerns of combining criminal and civil matters in family court were recently addressed in a 2002 study by the National Center for State Courts.¹⁷

b. Information Sharing Between Multiple Courts

(also referred to as case tracking or one case manager-one family)

In this case coordination model the family's separate cases remain in front of the multiple judges in which they were originally filed. However, all the judges, attorneys, and other significant persons or service providers are given a written report of the family's multiple cases, which may include the cause numbers, hearing dates, party names, and summaries of outstanding orders. The report is called a case management or case coordination report. The report may be placed in the jacket cover of each of the family's multiple case files, or kept in a separate file folder. The individual court case files may also be labeled on the outside with a bright fluorescent sticker to notify the judges that these court cases are part of the family court proceeding. Courts forward copies of their court entries and orders to the family court personnel who update the family court reports before and/or after any hearings in one of the family's cases.

Information sharing between multiple courts is designed to promote more informed decision making, and to thereby avoid inconsistent or redundant orders. It should also facilitate service coordination for the family. Also, using Family Court Rule 4 the judge can take judicial notice of the orders in the family's other cases. Copies of the documents to be judicially noticed must be provided

to the parties.

Porter County has piloted the *information sharing* model with very positive results. It generally calls its pilot program *case tracking* or *one family-one case manager*. The same family court case manager prepares the necessary information sharing documents in all of the family's litigation and keeps the parties and service providers apprised of significant action in the multiple cases as appropriate. Porter County overcame the challenges of record retrieval from multiple court locations through persistence and cooperation with court personnel and the Clerk.

LaPorte County has adopted the *information sharing* model with variations to suit its own needs. The LaPorte family court personnel locate and maintain a copy of all court orders involving the multiple case families so judges and parties can have rapid access to orders from the family's other cases. Marion, Boone, and Montgomery Counties also use some aspects of the *information sharing* model.

c. Which Model of Case Coordination is Best?

In assessing the case coordination models piloted in Indiana, it was not possible to select the *one family-one judge* model or the *information sharing between multiple courts* model as better. Pilot courts appear equally satisfied with whatever model they use. Instead of trying to select one model over the other, the experience of the pilot projects indicates that there are several factors to consider in selecting a model that may be best for a particular community. The project experience also shows that some court systems can use both models, applying the appropriate model on a case-by-case basis. The factors significant to the case coordination models are listed below.

Existing court systems and practices.

Some court systems may not have the flexibility and scheduling freedom required by the *one family-one judge* model, or judges may be concerned

¹⁷ Brenda K. Uekert, et al "Integrating Criminal and Civil Matters in Family Courts: Performance Areas and Recommendations" (National Center for State Courts, 2002). The publication may be obtained from the National Center of State Courts by phone contact at 757-253-2000 or on the Web at www.ncsconline.org.

that case transfers will alter weighted case load plans. Larger court systems may develop judicial economies or practices that are not amenable to the *one family—one judge* model, such as (1) judicial officers specializing in a narrow range of case types or (2) judicial officers conducting specific stages of the litigation in block scheduling (such as conducting all the preliminary, detention, initial, or contempt hearings of a particular case type), rather than hearing cases from start to finish. Given the growing complexity of divorce and juvenile matters, judges who specialize in particular case types may need cross-training to litigate the full breadth of case types, including divorce, paternity, CHINS, delinquency, termination of parental rights, adoption and guardianship. Also, a *one family—one judge* model needs to function out of, or be closely connected to the juvenile court, given the reality in Indiana that juvenile courts tend to have primary access to service systems for children and families (and accountability for those service costs).

Administrative and Judicial Economies.

The *one family—one judge* model may involve significant or little administrative effort to create initially, depending on the formalities involved with transferring a case from one court to another. However, once the case transfers are completed, the *one family—one judge* model may only require minimal administrative activity to maintain. The same judge and the same court staff are responsible for all of the family's files. Also, the *one family—one judge* model may save judicial time through concurrent hearings, and one-judge scheduling may expedite multiple cases through the system. The *information sharing between multiple courts* model, on the other hand, involves ongoing administrative time in obtaining, updating, and distributing case reports and court orders to multiple courts, parties, and service providers. However, it should be considered that the detailed administrative reports on all of the family's litigation used in the *information sharing* model may save judicial time in case coordination. For example, it may be more time efficient and accurate for a judge to reference a detailed case coordination report (as used in the

information sharing model) to check on the status of one of the family's cases than to page through the actual court files to locate pertinent information.

Informed Decision Making, Case Coordination and Consistency.

The *one family—one judge* model would seem to better ensure case consistency and coordination since the rulings in the family's cases are made by the same judge. This model should avoid inconsistent orders. It should also facilitate coordinated service delivery for the family and increase family accountability to the judge regarding the family's "big picture." On the other hand, the frequent updating and redistribution of detailed reports on the multiple case activity in the *information sharing* model may better ensure that lawyers and service providers treating the children or families are more fully informed about the full range of the family's cases.

Perceptions of Fairness and Prejudice

It is suggested that this may be the most important factor regarding case coordination models. In some communities there is a significant sense that a judge will be prejudiced if he hears multiple cases involving the same family and that the judge will not strictly adhere to evidentiary and procedural rules in *bundled* cases. There is a concern that the family's judge might become too lax or personally involved. For example, judicial officers and lawyers in Porter County expressed concern during site visits about the potential sense of impropriety and prejudice in a judge hearing multiple cases involving the same family. However, in other communities the legal bar has a strong sense that the *one family—one judge* model is more efficient for the families and courts. This positive attitude may be affected by the bar's perception of the abilities and fairness of the judicial officer or officers that serve as the family court judge. Lawyers interviewed in Johnson County were not concerned about judicial prejudice. They expressed their opinions that having all the family's litigation in front of one judge saved time for the lawyers and judges and their clients benefitted from coordinated and consistent court orders.

d. Use of Both Case Coordination Models by Pilot Projects

Although the case coordination models have significant differences in purpose and process, a pilot project can use both models, applying the appropriate model on a case-by-case basis. Marion County uses a *one family—one judge* model (most often referred to as *case bundling*) when one of the family's multiple cases is in juvenile court, but uses the *information sharing between multiple courts* model for other multiple case litigation situations.

Although Boone and Montgomery Counties focus primarily on the *one family—one judge* model, they also use the *information sharing between multiple courts* model when this is more appropriate to the needs of the court and the family. Monroe County generally transfers and bundles all of the family's multiple cases before the same judge in Division 7, but not always. If the family's criminal cases are too complex, too close to disposition, or not closely enough related to the rest of the family's litigation, then Monroe County tracks the criminal cases for information purposes, but does not transfer them into the same court.

e. Case Coordination Through Non-Adversarial Dispute Resolution Programming

Non-adversarial dispute resolution can also be a valid form of multiple case coordination. Both Owen and Putnam Counties provide affordable, non-adversarial dispute resolution (which they refer to as facilitation) in CHINS and termination of parental rights cases, pro se paternity and divorce custody cases, and any other appropriate litigation involving families, including multiple cases. The facilitation process is similar to mediation. Both projects use an intake process prior to the facilitation meeting to directly ask the parties if the family has other pending litigation related to the case set for facilitation. When other cases are identified they may be included in the facilitation process for purposes of potential resolution, or as more often happens, information regarding the

related cases is provided to the facilitator and parties to enable more informed decision making. Putnam County has combined the family's multiple CHINS and custody cases in facilitation. It has also been successful in reaching facilitated agreements in situations involving the family's CHINS case and the related criminal child molestation, child battery or child neglect case.

There are serious challenges with mediating criminal and juvenile cases together, and despite Putnam County's success in this area, some pilot counties have not had positive results. However, further innovations should be explored in this area given the potential of mediation to expedite cases and avoid litigation for the child.

A 2001 project report sponsored by the State Justice Institute outlines Wisconsin's successful use of mediation to jointly resolve criminal and civil child protection cases.¹⁸

3. Eligibility Criteria and Court Processing for Multiple Case Families

Once a pilot project selects a model or models of case coordination, the project must set criteria for project eligibility. This is done because not all families need case coordination. The projects also develop standardized processes for identifying appropriate families and assigning their cases to the family court project.

a. "Family" Defined and Eligible Case Types

The pilot projects have adopted flexible definitions of what constitutes a "family." In most projects "family" is determined on a case-by-case basis and may include the custodial and non-custodial parents, putative fathers, step-parents, and legal guardians. It may also include the siblings and significant adults (such as boy/girl friends of parents) who reside in the household with the child or have significant contact with the child.

The court must determine what case types are eligible to be included in the family court project. Most pilot counties include the following case types: divorce and paternity custody and visitation, Child

¹⁸ See John A. Martin and Steve Weller, "Mediated Child Protection Conferencing in Criminal and Civil Child Abuse and Neglect Cases: Lessons from the Wisconsin Unified Family Court Project" (State Justice Institute, April 2001)

in Need of Services (CHINS), termination of parental rights, delinquency, guardianship, adoption, and civil protective orders. Some family court projects also include all of the family's criminal cases, some include specific types of criminal cases that will impact the family's situation such as domestic violence, child sexual offenses, child neglect or abuse, and substance abuse crimes, and some projects include the family's criminal cases on a case-by-case basis. Civil litigation involving family members, such as small claims or evictions, may sometimes be included in the family court process.

Having determined eligible case types, the court may have additional requirements. Generally, the pilot projects require that the family have at least two cases of the eligible case types pending in the court system, and at least one of the cases must involve a child issue. Even though a family may have multiple cases of the types that are eligible for the family court project, limited resources and practicality may require additional screening to determine if assignment to the project will result in greater efficiency and effectiveness for this particular family and the court system.

b. Mechanisms to Identify Multiple Case Families and other Appropriate Families

Each pilot project must determine how it will

identify multiple case families. Table 12 illustrates the various persons in the community who channel families to the pilot project. Below is a discussion of the various methods used by the court and these persons to identify and refer multiple case families to the family court project.

Referral Process. Referral or identification forms can be used for persons to refer themselves or others into the project. The forms may be completed by judicial officers, court staff members, attorneys, pro se parties, law enforcement, probation officers, office of family and children case managers, CASA/GALs, school personnel, or service providers. Referrals may be made by phone, or judges or parties may make oral or written motions at status conferences or in other hearings. Table 12 identifies the types of referrals most frequently made in the pilot counties. High referral rates may indicate "buy-in" or acceptance of the pilot project by those persons or agencies. The table clearly indicates that the court and its staff are the most frequent source for referring families to pilot projects, with attorneys, CASAs, Office of Family and Children, law enforcement and various other persons also making referrals.

Automatic Referrals. Counties may require that certain case types, or all cases of a particular type involving one or more pro se litigants, are

Table 12: Channels Through Which Families are Identified for Family Court

	Johnson	Monroe	Porter	Putnam	Boone	Montgomery	LaPorte	Marion	Owen	Total
School	1									1
Prosecutor/staff	2	2							1	5
Law Enforcement			13							13
Probation	3	4	9				5			21
CASA/service provider	1		18					4		23
Attorney	32	7	1	6					2	48
Litigant	1	1								2
Office of Family and Children	8	3	27		9	3	1			51
Clerk/Appearance Form	2		4							6
Judge/Court Staff	78	48	12	19	17	9	30	47	1	261
Automatic Referral				13						13
Other	1	1	6							8

automatically assigned to the family court project. For example, in Putnam County the judge's office staff automatically assigns new divorce or paternity cases involving pro se litigants to the family court facilitation project. This automatic referral expedites pro se litigation. Johnson County recently adopted a local rule to require that all felony, non-support cases be filed in the family court.

Appearance Forms. Table 12 reflects that a few multiple case families have been identified through Appearance Forms and/or identification by the clerk at case filing. Indiana Trial Rule 3.1(A)(6) requires the petitioning party (pro se or by counsel) to list the "caption and case number of all related cases in the Appearance Form." Additionally, court systems can adopt local court rules requiring that "all" or specific types of pending cases involving the petitioner be listed on the Appearance Form. The Clerk, the judge's staff, or family court personnel can review the Appearance Forms in new case filings to identify cases appropriate for the family court project. Both Marion and Porter Counties created by local rule specialized Appearance Forms requiring the petitioner to list all of the members of the petitioner's family and/or household. The forms also require the petitioner to list any of the following types of cases that are pending regarding the petitioner's family or other persons residing in the household: juvenile cases, probate cases, divorce cases, and crimes involving domestic violence, family violence or substance abuse.¹⁹

Judicial Inquiry. At a status or case management conference, or at the first court hearing, judicial officers can directly inquire of attorneys or pro se parties regarding the existence of other court cases involving the parties. As an example, judicial inquiry is regularly used in the Marion County Juvenile Division in CHINS cases. The judicial officer directly asks the attorneys and parties in CHINS cases whether the children are the subjects of a divorce or paternity case, and whether the case is an active or closed case. The reasoning for this questioning is to prevent the juvenile court from

entering custody, visitation, or service orders that are in conflict with already existing orders in a paternity or divorce case. Knowledge of these other cases also enables coordination of civil child support orders with juvenile court reimbursement orders for services or care provided to the child. The judicial officer also asks if the parents have a criminal case pending that is related to the CHINS case. This questioning enables the juvenile court to determine if the criminal court has entered "no contact" orders that will affect the parties involved in the CHINS case, and gives the juvenile court an understanding of the time frame for the criminal court's litigation.

There is no known ethical objection to this judicial inquiry. In fact many judges routinely ask if the parties have filed protective orders in other courts that should be transferred to the divorce case. The judge can make it clear to all persons present that identification of related cases is for the administrative purposes of determining (1) if and how the cases should be coordinated to avoid jurisdictional errors or inconsistent orders, or (2) whether the multiple cases should be assigned to the family court project. No evidence will be used from one case in another case unless certified copies of court records are properly offered into evidence, or the cases are assigned to the family court project and appropriate notice procedures are followed to permit the use of judicial notice under Family Court Rule 4.

Domestic Violence Police Reports and Child Protection Reports. The Porter County pilot project receives copies of all domestic violence police reports and child abuse and neglect reports. Project personnel review these reports and cross reference them to court records to determine if family members have other litigation pending that should be linked when and if new cases are filed.

Court Record Searches. Searching court records is one mechanism to identify if a particular person is involved in multiple cases in the court system, and/or to obtain needed court information on a

¹⁹ See Marion County Family Law Rules, App. A Appearance Form, Indiana Rules of Court-State (*West Group* 2002), p.551.

person who has been referred for family court programming. However, this is time consuming and often not accurate or comprehensive.

Many court systems have separate databases for criminal, civil, and juvenile cases which are not integrated, and slight variations in name spelling (and common surnames) make it difficult to identify the litigation of a particular person. Furthermore, children who are the subject of divorce custody litigation are sometimes not listed as parties in the pleadings and their names are not entered into the court databases. Therefore, the system has no means to link the child's new juvenile litigation to the pre-existing divorce custody case. Also, confidentiality of juvenile records has generally prevented the civil courts from easily accessing the juvenile databases.

While it may be too time consuming under current technology to conduct computerized record searches to discover all of the possible multiple case families, it is not unreasonable to develop policies for record searches on new case filings in a narrow range of case types. For example, record searches can be conducted by the Clerk who receives new filings, or the court staff when new cases are forwarded to the court offices. Some court systems already require the Clerk to link new criminal filings with pending or disposed cases on the same individual, so that all of the criminal cases involving the same defendant can be filed with the same judge. Clerks also link new protective order filings with already existing divorce or paternity filings involving the same parties. Because the family court project data indicates in Table 10 of this report that CHINS families have the greatest number of multiple cases, it may be appropriate and feasible to conduct record searches on the family members in all new CHINS filings. Another approach, particularly for smaller jurisdictions, is to conduct record searches on juvenile cases scheduled for hearing in the coming week. The searches can be conducted by existing court staff or by specially designated family court personnel.

c. Standardized Forms and Procedures

The pilot counties have developed policies and

forms for referring, selecting, and processing multiple case families through the court process. Some projects use more formal processes than others.

Referral or Identification Forms. Most counties have a written form that can be used to refer persons or families to the family court project or to identify appropriate families. Forms provide for a listing of known family names and cases, and reasons why family court assignment would be appropriate. Many projects find that judges and court staff make informal, oral referrals to family court personnel most frequently.

Profile/Screening/Recommendation Forms. Once a family member has been identified as a potential candidate for the family court project, a profile or screening form may be used to list court record searches and other information obtained to determine if the family's multiple cases should be assigned to the family court project. The form may include information about cause numbers, case types, judges, hearing dates, and any other significant information about the family's multiple cases, including at-risk factors relevant to child safety or stability. The same form may also include a recommendation for or against assignment to the family court project and recommendations regarding the following: model of case coordination, transfer of cases, combined status hearings, mediation/facilitation, and service programming. The recommendation is generally based on information obtained from the family's court files, rather than a personal intake interview with the parties unless the project county conducts such interviews.

Order for Assignment to Family Court Project.

Policies developed by each family court will indicate what judge or judges have the authority to assign cases to family court. A form order can be used to assign the cases to the family court project. The order will list the cause numbers of the involved cases, and may also vacate or set new hearing dates, and advise parties about the process and purpose of the project and the applicability of the Family Court Rules. Family Court Rules 3 and 4 require that the

court provide notice of the assigned cases and the opportunity to object to the assignment to family court within 10 days.

Case Transfers. If the *one family—one judge* or *bundling* model is used, all of the family’s eligible case files will be physically transferred to a designated judge. Necessary case transfer orders, notices and CCS (Chronological Court Summaries) entries will be completed. The cases may remain permanently in the new court or be transferred back to the court of origin when the family’s multiple litigation is resolved. Some pilot projects follow a policy of keeping the transferred cases in the same court, even when all pending litigation is completed and the family court proceeding is closed. This ensures that any future modification or contempt petitions will be heard by the same judge.

Case Management and Case Coordination Reports. If the *information sharing between multiple courts* model is used, a case management or case coordination report will be completed. This report may be an update or modification of the earlier completed screening/profile/recommendation form. The case management report may include the cause numbers, party and attorney names, hearing dates, and a brief summary of the significant orders for each of the family’s multiple cases. Some reports may also include summaries of orders from recently closed cases involving family members, particularly criminal rulings relevant to child or family safety. The report will be provided or made available to the judicial officers, lawyers, and pro se parties involved in the family’s multiple cases. Probation, Office of Family and Children, CASA, and other service providers will receive copies of the reports when they are parties to the litigation, or when case coordination requires their knowledge of this information. Reports may be updated before hearings, with copies provided to necessary parties and judges.

Case management or case coordination forms, or some variation thereon, can also be used in the *one family—one judge* model to ensure that the judge and the parties have complete and updated knowledge on the family’s multiple cases. However, this is labor intensive.

Family Court Roster. The Family Court Roster is a document that can be used in any case coordination model. The roster may list the names of family members and cause numbers assigned to family court, and may include upcoming hearing dates. The Roster may be distributed to all judicial officers and clerks, and updated on a weekly or monthly basis.

Family Case Data Form and Data Spreadsheets. The pilot projects maintain an information sheet on each family listing the data required by the Supreme Court. This data is transferred to a comprehensive spreadsheet to track the number of cases and families served by the project, at-risk social factors on each family, Family Court Rule usage, and other data.

C. Non-Adversarial Dispute Resolution

1. The benefits of Non-Adversarial Dispute Resolution in Family and Juvenile Law Cases

Promoting non-adversarial dispute resolution is one of the values of the Family Court Project. Out-of-court problem solving can save judicial time, particularly when one or more of the parties does not have an attorney and may come to court unprepared. Common experience indicates that parties in custody disputes are more likely to comply with dispositions they helped fashion and jointly agreed upon. The mediation process may help parties develop long term problem-solving techniques focusing on the best interests of the child. Non-adversarial dispute resolution can avoid the parental stress and hostility that occurs in the court room.

Research also indicates the potential benefits of non-adversarial dispute resolution in CHINS and termination of parental rights cases. This non-adversarial dispute resolution may variously be referred to as dependency mediation, facilitation, or family group conferencing. The 1999 "Guidelines for Public Policy and State Legislation Governing

Permanency for Children"²⁰ state the purpose of the national movement for dispute resolution in child protection proceedings:

Professionals who work with children and parents have become increasingly dissatisfied with customary reliance on the traditional adversarial system in resolving family-related disputes, including cases involving children's protection, placement, and permanent care. The power struggle in contested child welfare-related cases and hearings may foster hostility among the parties and dissipate money, energy and attention that could otherwise be used to solve problems cooperatively. Parties may become polarized, open communication may be discouraged, and there may be little investment in information sharing and joint problem solving. Children may suffer when adversarial tensions escalate and ameliorative services are delayed.

"Guidelines" at V-1

The Guidelines further state:

...most child abuse and neglect cases are resolved through informal settlement negotiations. Unfortunately, these settlements are often quickly made in courthouse hallways where the interests of all parties may not be carefully or fully considered. Hastily made agreements or stipulations made immediately prior to a hearing can do a disservice to both children and their families.

"Guidelines" at V-1.

2. Mediation and Facilitation Models of ADR

Several family court projects target non-adversarial dispute resolution as a significant need for low income and indigent families, and as a means to expedite the court process, particularly for

families without legal counsel.²¹ The family court projects primarily use two different models of dispute resolution: mediation and facilitation. Mediation is a process controlled by the Indiana Alternative Dispute Resolution (A.D.R.) Rules which define mediation in Rule 1.3 as "a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties."

Facilitation is an emerging method of non-adversarial dispute resolution.²² Facilitation is not defined in the Indiana case or statutory law. A.D.R. Rule 1.1 states that facilitation and mediation are both recognized "methods" of alternative dispute resolution, but A.D.R. Rule 1.2 provides that only mediation is controlled by the Indiana Alternative Dispute Resolution Rules. As practiced in the Indiana family courts to date, facilitation tends to be a flexible and informal model that uses a person identified as a facilitator or neutral to help parties (and other necessary agencies or service providers) reach resolution of contested issues and/or to fully disclose safety concerns and service options in juvenile law cases. The family court projects have used trained family law mediators to serve as facilitators in juvenile and domestic relations cases.

In addition to mediation and facilitation, the Family Court Project also considers judicial conferencing in multiple-case family situations or in complex custody cases a means of non-adversarial dispute resolution. Table 13 below notes the types of cases and models used for dispute resolution in the project counties. Several family court counties are

²⁰ Donald N. Duquett and Mark Hardin, "Guidelines for Public Policy and State Legislation Governing Permanency for Children," (Department of Health and Human Services, 1999), pp. V-1 through V-16. This publication is available through the National Clearinghouse on Child Abuse and Neglect Information at 1-800-FYI 3366 or the Web site of www.acf.dhhs.gov/programs/cb. See also Howard Davidson, "Using Dispute Resolution in Child Protection Cases" (ABA Center on Children and the Law, 1997).

²¹ Development of affordable non-adversarial dispute resolution programming is not unique to the family court counties. For example, Allen County conducted an extensive pilot program in dispute resolution in divorce custody cases, and the Allen County bench and bar have worked cooperatively to develop affordable mediation programming using volunteer attorneys.

²² Judge Charles Pratt in the Family Court Relations Division of the Allen Superior Court appears to be the first Judge in Indiana to utilize the "facilitation" label in juvenile law dispute resolution. Working with the National Council of Juvenile and Family Court Judges, Judge Pratt developed Model Court programming to conduct informal conferences outside of the courtroom to help parents, child protection agencies, and child advocates cooperatively discuss and agree on protection and treatment plans necessary to parent-child reunification. Tippecanoe County developed similar case conferencing which it also called "facilitation" in dependency and truancy cases. With the approval of the Indiana Supreme Court, Judge Pratt and the Indiana Judicial Center implemented in 2002 a "Learning Communities" committee to further address and standardize facilitation and other innovative court improvements. Judicial officers from two family court projects serve on the committee. The term "facilitation" is used more broadly in other states to include a variety of actions to help pro se parties and others accomplish various legal goals or processes.

planning dispute resolution programming for the future, but have not yet finalized programming details or funding arrangements.

referred party (usually by phone) to confirm financial need and willingness to mediate the disputed issues. Although the Coordinator indicates

Table 13: Non-Adversarial Dispute Resolution Programming

	Paternity Custody and Visitation	Divorce Custody and Visitation	CHINS Termination of Parental Rights	Judicial Status/Settlement Conferences
Monroe	Mediation	Mediation		
Johnson				Multiple Case Status Conferences
Porter	Mediation	Mediation	Planning	
Putnam	Facilitation	Facilitation	Facilitation	
Boone	Planning*			Multiple Case Status Conferences
Montgomery	Planning*			
LaPorte			Facilitation	
Marion	Planning Mediation	Planning Mediation		
Owen	Facilitation	Facilitation	Facilitation	

* Boone and Montgomery Counties are in the planning stages for non-adversarial dispute resolution and they have not finalized the mode of dispute resolution they will use or which case types will be eligible for the programming.

3. Mediation in Divorce Custody Cases

The Porter County pilot project used family court grant funds and a Court Improvement Project grant in 2000 to develop an innovative program to provide mediation to low income, at-risk families in divorce custody cases. Many of these families were pro se. The initial goal was to use mediation to prevent troubled families in divorce litigation from escalating into child abuse and neglect, or into delinquency situations. A portion of the grant funds were used to train local attorneys, family court staff members, and social workers from the local Family and Youth Service Bureau in family law mediation.

This is how the Porter family court divorce mediation program works. Judicial officers may refer pro se or low income families to the mediation program as they deem appropriate. Attorneys may request the program for their clients who are indigent. The Family Court Coordinator generally relies on the knowledge of the judicial officers and attorneys with regard to the financial eligibility of families referred, but additionally talks with the

this seldom occurs, an attorney or party stating a strong or repeated unwillingness to resolve the dispute by mediation, may not be approved for the mediation program given the limitation of program resources. The approved party is directed by phone and written correspondence to contact the other party (or counsel for the party) to agree on one of the listed local mediators and to

schedule the mediation date directly with the mediator. The Family Court Coordinator takes additional time with pro se parties to ensure that they understand the purpose, process and consequence of mediation. When one of the parties is not represented by counsel, the Family Court Coordinator relies on the integrity and ethics of the attorney of the represented party to ensure that the mediator selection process is done fairly. To date all parties have been able to select a mediator without using the formal striking process or other complications. If the parties have attorneys, the attorneys may attend the mediation or agree to be bound by any agreements reached by their clients if they choose not to attend.

In the Porter County Program when an agreement is reached and thoroughly reviewed with the parties, the mediator generally has the parties sign the agreement generated on a lap top computer, or notes thereof, before the parties leave the mediation session. The mediator generally takes responsibility to draft the document, obtain signatures, and file the document with the court. This avoids substantial

delays and the possibility that pro se parties might not file the agreement with the court.

Monroe County initiated in 2003 a divorce mediation program for low income parties utilizing volunteer students from the Indiana University School of Law and volunteers from the Community Conflict Resolution Project of Bloomington. This program is an extension of the Monroe County paternity mediation program discussed in the next section.

4. Mediation in Paternity Custody Cases

In 2000, the part-time Porter County Family Court Case Manager collaborated with the Valparaiso School of Law to use students and local volunteer attorneys to help families resolve custody and visitation issues in paternity cases. The program enables low income, and most often pro se parties, to work with a neutral person in agreeing on an appropriate child custody and visitation arrangement. The program is known as the "paternity clinic."

The paternity clinic is scheduled for the dates and times that the court conducts hearings on paternity establishment and related child support issues. After the hearing establishing paternity and child support amounts is completed, the judicial officer invites the parties to meet immediately with a supervised law student or a volunteer lawyer to resolve remaining custody, visitation, or other issues related to the paternity case. The parents discuss their options and needs with the assistance of the volunteer, and their agreements are codified in a form order which the parties present to the judge that same day for approval. The process allows parents to more fully participate in the determination of the custody and visitation orders and gives them greater ownership and commitment to the orders. Highly adversarial cases may be referred for additional clinic sessions, or may not be appropriate for this process.

The Indiana University School of Law at Bloomington joined with the Monroe County

family court project in 2002 to initiate similar programming in which families mediate issues arising in their paternity cases. Law students and volunteers from the Community Conflict Resolution Project meet with families at the courthouse to help them mediate original custody and visitation orders once paternity and support orders have been established. Law students are supervised by the Director of the Child Advocacy Clinic, Clinical Law Professor Amy Applegate or by the family court coordinator. As appropriate, the project may also include mediation of petitions to modify or contempt actions.

5. Facilitation in CHINS, Termination of Parental Rights, Pro Se Custody, and other Intra-Family Litigation

In July of 2000, Putnam County received a Court Improvement Project grant to develop a form of non-adversarial dispute resolution for pro se custody cases, CHINS and termination of parental rights cases, and other intra-family litigation. Putnam County calls this process facilitation. Owen County began providing facilitation services in 2002.

The purpose of facilitation in custody and other family law disputes is to help the parties obtain a resolution outside of the courtroom to the single or multiple cases involving the family. In CHINS cases or other complex custody disputes the facilitation meeting may also include extended family members, child protection case managers, child advocates, and service providers. Facilitation in CHINS cases may have the additional goal of obtaining full disclosure between the parents and agencies on issues affecting child safety, case planning, and permanency. Facilitation has also been used in Putnam County to jointly resolve the criminal and CHINS cases involving the same child victim.²³

This is how facilitation works in Putnam and Owen Counties. The part time Project Administrator in each county receives referrals from the court or parties, conducts an intake interview

²³ See section B.2.e. above in this chapter for further discussion of non-adversarial dispute resolution as a mechanism to coordinate CHINS and criminal cases involving the same child victim, and Wisconsin model project on the use of mediation to jointly resolve criminal and civil child protection cases.

with the parties, researches court databases to identify if family members have other pending litigation to be addressed or joined in the facilitation, and arranges for one of the family law trained mediators to conduct the facilitation meeting. The Project Administrator gives the facilitator copies of court files, and information collected from the intake interview and court record searches. This information is shared with the parties and counsel as appropriate to due process. At the facilitation meeting the facilitator seeks to clarify the issues and help the parties reach agreements consistent with the safety and best interest of the children. In CHINS and termination of parental rights facilitations, the format approximates more of a conference as the facilitator tries to help the parents and all other participants clearly express and discuss their concerns and known facts. Agreements are drafted on a lap top computer, signed before the parties leave the meeting, and forwarded by the facilitator to the court for approval.

Although most of the custody disputes involve pro se parties in the Putnam County program, attorneys of eligible clients are welcome to attend the facilitation meeting. Alternatively, an attorney for a low income party can waive his presence at the facilitation meeting and waive any right or obligation to challenge the agreement, or the attorney can specify a phone number where he can be reached during the facilitation meeting to review any agreement obtained. In CHINS and termination cases parents are represented by counsel in the facilitation meeting, and the other parties may have counsel or access to counsel as needed for consultation prior to signing agreements.

Facilitation is similar to mediation, but may vary from traditional mediation in significant ways. First, the Alternative Dispute Resolution (A.D.R.) Rules do not technically apply to facilitations, although family court projects may indicate in policies and procedures that the Rules will serve as guidelines. Since A.D.R. Rule 2.11 on confidentiality does not technically apply to facilitations, it is important for the family court projects to develop policies or local rules that specifically define and address

confidentiality. With regard to confidentiality, Putnam County's local court rules state that the "information shared in a facilitation meeting is confidential, with the exception of information regarding child abuse or neglect and /or intent to cause immediate or future physical harm to another person." The Putnam County local rules also state that "information shared in the facilitation meeting shall not be used as evidence in any court action." Second, facilitations may be more informal and flexible than traditional mediation. Third, facilitation (particularly as practiced in CHINS cases) tends to focus on the safety and well being of the child, whereas traditional mediation may allow parents more freedom to enter into agreements that best fit the parents' needs and desires.

The LaPorte County pilot project uses facilitation in CHINS cases. The family court coordinator is a trained family law mediator and serves as the neutral in conducting facilitation meetings. The LaPorte Juvenile Court sets facilitation meetings as standard practice in the early stages of CHINS case for the following purposes: (1) to ensure that all parents, Office of Family and Children case managers, child advocates, and service providers are fully aware of the child protection issues and service needs of the family, and (2) to increase the involvement (and commitment) of the parents in designing a permanency plan in the best interest of their child, and to avoid contested hearings. LaPorte County also uses facilitation meetings at the permanency stage of CHINS cases. Prior to the CHINS facilitation meeting, the family court staff member conducts a court record search on the child, sibling, parents, or other significant adults in the household. This information regarding current and prior court cases involving family members is used in the facilitation meeting to ensure informed decision making and to avoid conflict with other existing court orders.

6. Special Considerations with Pro Se Families

A mediation or facilitation meeting involving one or more pro se parties may have some unique

factors, and present some particular challenges when the mediator for the pro se parties is a lawyer. Whereas a mediator in a traditional mediation will rely on the attorneys for the parties to give legal advice and to review/draft the agreements or court orders, this is not available in pro se situations. Therefore, it is critical that the mediator advise the pro se parties that he/she is not serving as legal counsel for any party and that the mediator cannot give legal advice. However, the mediator may need to inform the parties regarding legal options and legal issues that must be addressed in order to ensure that the final agreement is comprehensive. In pro se cases the mediator may use a check list to be sure that all custody, visitation, and child support issues are addressed. Also the mediator in pro se cases will act as a scrivener (rather than as a lawyer) in reducing the agreement of the parties to writing and in drafting the corresponding orders, since no attorney is available to do this on behalf of the parties. The mediator may need to stop a mediation meeting with pro se parties if it is clear that one or both parties need technical legal advice or there is a power imbalance between the parties.

It may be time effective to have family court personnel conduct an intake interview with pro se parties prior to the mediation or facilitation meeting. The interview can screen for inappropriate referrals, which might include parties who indicate an unwillingness to participate in the mediation in good faith or parties who have domestic violence issues. The intake interview can also ensure that the parties understand the purpose and consequences of the mediation, and that they are advised to bring necessary financial and other documents for the mediation meeting.

7. Costs and New Legislation to Fund ADR Programming for Low Income Families

The costs and resources for mediation and facilitation programming vary. Some counties utilize

family court grant money, in addition to other resources. The Porter County divorce mediation program pays local attorney mediators \$95 per hour, with a cap of \$500 per case. Also, trained family court staff members provide mediation as part of their work responsibilities, and Family and Youth Service Bureau social workers provide mediation services at little or no cost. The Porter County Paternity Clinic utilizes grant funds to reimburse a local attorney to supervise the law students when needed. Trained family court personnel also recruit and coordinate volunteer attorneys and law students to conduct mediations, and conduct mediations themselves when appropriate. The Monroe County mediation programs have no specified funding and are primarily the volunteer effort of the law school and community conflict resolution group, coordinated through the family court personnel. The LaPorte County facilitation project utilizes its family court coordinator to conduct CHINS facilitations. The Putnam County facilitation program pays local attorneys at a rate of \$100 per hour. The Putnam program has been funded in the past by Court Improvement Project grants, local foundation grants and a grant from the Office of Family and Children. The Putnam County facilitators discuss party contribution for mediation costs with all parties. The parties generally agree to reimburse the county according to their financial ability, and these reimbursement agreements are placed in the court order.

The family court projects are expected to utilize the 2003 legislation that allows counties to collect an additional \$20 Alternative Dispute Resolution (ADR) fee in divorce and paternity case filings, to subsidize the cost of dispute resolution programming for low income families.²⁴ To be eligible to collect the ADR fee, the county must submit an ADR Plan for approval by the Division of State Court Administration in compliance with standards and guidelines. The ADR Plan legislation

²⁴ See IC 33-4-13 and Indiana Alternative dispute Resolution Rule 1.11 for details of ADR Plan and collection of ADR fee. See also the Web site to reach the Indiana Judicial Center, Domestic Relations Committee (www.IN.gov/judiciary) for standards and guidelines for ADR Plan.

requires that litigants shall make a copayment for services in an amount determined by the court based on the litigants' ability to pay.

8. Court Conducted Non-Adversarial Dispute Resolution: Status Hearings and Settlement Conferences

Although most of the dispute resolution programming focuses on out-of-court, non-judicial activity, it is important to recognize that judicial case conferences or status hearings in the courtroom can be an effective means of non-adversarial dispute resolution. Boone and Johnson Counties regularly conduct combined status hearings in multiple case family litigation. These judicial status hearings can resolve one or more of the contested issues.

D. Specialized Services

Early in the implementation of Phase 1 of the Family Court Project, the pilot counties identified serious unmet needs for families in the court system. They particularly noted that at-risk families in divorce, paternity, and protective order cases do not generally have access to the "safety net" services available through juvenile court, juvenile probation, or the Office of Family and Children. Also, courts lacked funds or programming to monitor high-risk families for compliance with custody orders related to child safety issues. Several pilot projects implemented a wide range of specialized programs to address these needs. The projects also implemented programming to assist pro se families to process through the court system more efficiently and effectively.

It is significant to note that some of this service programming is not unique to the family court pilot projects. It is based on national models or already existing programs in Indiana's juvenile and divorce courts. The family court pilots have become experts at borrowing the ideas of others. The Allen Superior Court Family Relations Division, although not a pilot family court project, has been particularly generous in educating and mentoring pilot projects in the development of resource rooms and facilitation programming.

Experience has shown that a family court project can serve as a catalyst to develop, spin off, or incorporate needed programming that does not exist elsewhere in the community.

1. Service Referral and Resource Rooms

Service referral programming generally means that the family court staff has developed a relationship with community service providers and helps parties access those service providers on a court ordered or voluntary basis. The referral process may involve a range of services. It may include explaining court orders to pro se or special needs parents, giving a family member the contact names and phone numbers for available service providers, actually making the service appointment for the family, negotiating to obtain an affordable service or available appointment time for the family, and/or follow-up calls and reports to advise the court and parties whether services were obtained.

Resource rooms are usually physical locations in the court house or a court annex where families can obtain helpful information, which may include brochures on available services with necessary contact and cost information, pro se pleading forms, and other information. The resource room may be completely "self help" or may be staffed by volunteers or court staff to assist families in utilizing the resources and/or scheduling needed appointments. A resource room may be particularly helpful for indigent families without easy access to phone service or a permanent address for return calls.

Johnson County's family court project can obtain services for its at-risk families through ACT (Access Coordination Team). ACT is an independent community organization which includes representatives from mental health, Juvenile Probation, Office of Family and Children, CASA, and schools. It serves as a clearinghouse to maximize referrals to existing services for juveniles and families and to identify gaps in service provision or programming. Additionally, the paid staff of the ACT Screening Team screens families and juveniles, and develops and monitors service

plans to resolve problems. The family court project can refer up to three, at-risk families to the ACT masters degree level counselor at any time. Although ACT's staffing services have always been available to families regardless of the existence or type of formal court involvement, prior to the family court project there was no direct referral method for families involved in divorce or paternity cases who were not also involved with the Office of Family and Children or Probation.

Monroe County's family court makes referrals to, and utilizes the services of the community service provider collaboration referred to as Wrap-Around. The family court coordinator also makes direct referrals to service providers for families.

The Porter County pilot project implemented its social services programming by informally providing service referrals for project families on an "as needed" basis. Funding was eventually obtained to provide more structured aid to at-risk families. The Community Access Center was created by the pilot project in coordination with other community agencies and the probation department. The Center is located outside the courtroom at the Juvenile Services Center two days a week and on the first floor of the Valparaiso courthouse on two different days. The family court personnel at the Center provide "mini" needs assessments and service referrals to families involved in divorce, paternity, and delinquency cases. Higher risk families may receive intense case management services and home visits when needed. Courts and attorneys can refer families to the Center, or families can request the services on their own.

LaPorte County has developed a Judicial Assistance program to provide assistance to judicial officers in child custody cases. For example, the judge may direct the family court personnel to arrange for custody evaluations, mental health evaluations, drug testing, or out-of-state CASA supervision for indigent and/or pro se families who are unable to access the needed services themselves. The family court personnel also provide some monitoring for order compliance with high risk families.

Marion County is currently developing the funding and structure for a service referral program for at-risk families in civil custody cases.

Putnam County maintains a resource room in conjunction with its Pro Se and protective order programs, discussed further below in this section.

2. Direct Services Case Management and Truancy Programming

The Monroe County pilot project uses a case management model for single case families with complex or chronic custody and safety concerns. The Family Court Coordinator conducts separate intake meetings with the family members, and conducts follow-up meetings on a regular basis to help them resolve minor disputes, get needed services, and to ensure that family members comply with court orders. Written case reports are prepared as requested by the court and hearings are scheduled as needed. Direct service case management promotes order compliance and provides a measure of non-judicial supervision for families with domestic violence, mental health, and drug issues affecting the safety of children. Case management meetings may reduce the number of modification and contempt hearings and help families participate directly in problem solving. Porter County similarly provides direct services case management to select families through its Community Access Center as discussed in the section immediately above.

Many of the pilot counties already have outstanding truancy programs through their juvenile courts and probation departments. Porter County annexed its truancy programming into its family court pilot project to ensure a family approach to school problems. Project Attend and other school related programming focuses on working with families to reduce truancy and other at-risk situations. Families can receive ongoing case management services to address housing and financial issues, and a broad array of problems that impact the child's school situation. The goals of this school programming are early identification of problems and providing help to dysfunctional families, before school problems escalate to more

detrimental behaviors.

In 2003, the LaPorte family court project began assisting the "School Judge" in gathering court information about the students in Project Extended Day and the Michigan City Alternative School Program. This information gives the Judge a better understanding of the family's previous and current involvement with the justice system, and a list of the other programs and treatment the family has received in the past.

3. Protective Order Services

The recent overhaul of Indiana's protective order legislation resulted in an influx of new cases with pro se litigants and some uncertainty about the filing and coordination of protective orders. A protective order can be the family's first experience with the court system, and parents may need assistance to initiate divorce or paternity pleadings that will lead to permanent custody or visitation arrangements for their children.

The Putnam County family court project has implemented a new program to assist the court and families in certain protective order cases. The program applies only to cases in which an emergency protective order has been issued, but at a party's request or as required by law, a subsequent hearing has been set within thirty days to address custody, visitation, and child support issues. It is generally anticipated that the program will only be utilized when one of more of the parties are pro se.

The program uses grant funding to pay an attorney to conduct an intake meeting with the parties before the protective order hearing. The attorney does not serve as counsel to either party. The purpose of the pre-hearing intake is to make appropriate referrals to the IV-D child support enforcement prosecutor if the paternity of a child born out of wedlock has not been legally established, or to refer a parent to pro bono legal programming to initiate divorce proceedings. Referrals can also be made to domestic violence programming or shelters, or to counseling or financial assistance programs. The intake meeting helps the pro se parties outline what they want to

request to the court regarding custody, visitation or support issues. Given the domestic violence issue, parties are separated for the intake meeting.

The intake meeting is not a mediation, and does not address the appropriateness of the protective order. The intake meeting is expected to take 15 to 20 minutes. After the intake meeting, the parties appear before the judge for the protective order hearing. The intake attorney does not attend the hearing.

The Putnam County protective order programming is the joint effort of the judges, local attorneys who serve as facilitators for the family court, the Family Court Project Administrator, and the Family Support Center that serves victims of domestic violence. Grant funding was obtained for this new programming from the Putnam Community Foundation based on the identified need to help at-risk families in domestic violence situations obtain preliminary and permanent custody, support and visitation orders, and to provide a mechanism to refer at-risk families to needed services. The program should expedite the court process and the judge will not be burdened in the courtroom with providing social services information and referrals for families.

Marion County is using its pilot family court project to assist in the coordination and standardization of the protective order process. The family court project judges hosted a meeting to review the processes used by the clerks and judicial officers doing the bulk of the protective orders in the Protective Order Court, and the processes used by the civil judges who handle the protective orders involving existing paternity and divorce cases. The Family Court Coordinator is working with the clerks in the Protective Order Court to memorialize their procedures and develop policies for coordination between the courts. The goal is to be sure that cases are not lost between the cracks and that the clerks and the judges of all the courts (as well as local attorneys and citizens) know what courts provide what services with regard to protective orders. The coordination should ensure that emergency protective orders are properly

transferred to, and set for mandatory thirty day hearings in the civil courts when related divorce or paternity cases are discovered or subsequently filed.

4. Pro Se Services

The above discussed service referral, resource room, and protective order programming is specifically geared to assist pro se litigants. However, additional self help programming is evolving in the family court pilot projects. The Putnam County pilot project has recruited local attorneys to volunteer for the Pro Se Desk to answer basic legal questions and provide available forms to citizens with family law issues. The Pro Se Desk is available twice a month for two hours at lunch time.

The program has some similarity to the Marion County "Ask a Lawyer" project and the statewide "Talk to a Lawyer Today" project. Putnam County has consulted with Anthony Zapata from the State Pro Se Project to clarify the limitations on lawyers and lay people in answering legal questions, and Mr. Zapata conducted an in service training in the county. The volunteers utilize the resource room in the court house to provide brochures or contact information for needed services, and to help indigents obtain pro se legal forms through the Indiana Judiciary Web site www.in.gov/judiciary.

Individual Family Court Pilot Projects

Detailed Discussion of Phase 1 Pilot Projects

Johnson County Juvenile and Family Court Project

Basic Information

Population: 115,209

County seat: Franklin

Judicial officers: six

Project implementation: February 2000

Family Court Judges: Judge K. Mark Loyd and Magistrate Craig Lawson

Family Court Personnel: The project was implemented with the partial redesignation of the Court Administrator's duties and one full-time family court case manager/court reporter position. The Court Administrator's time commitments to family court has lessened, but she continues to have some administrative involvement.

Contact person: Donna Sipe, Court Administrator, 317-736-6813
dsipe@co.johnson.in.us, or
Family Court Case Manager/Reporter
Allison McClain, 317-736-3009.

Funding

Family Court Project Funding:

\$90,526 (\$44,785 per year for two years through 2001, plus \$956 one-time distribution)

\$25,000 (\$12,500 per year for two years for 2002 through 2003)

County government

\$15,883 (expenditure for family court case manager benefits through 2003)

Family Court Mission Statement

The purpose of the Juvenile and Family Court is to effectuate maximum utilization of services to Johnson County families who are involved in particularly complex litigation or multiple, simultaneously pending litigation through coordination of pre-trial proceedings and service referrals.

Family Court Model and Programming

Johnson County uses a *one family—one judge* model. The court accepts multiple cases involving the same family members and complex custody litigation. Also, beginning in 2003, all felony non-support cases are filed in the family court. Once a family is identified for the family court and determined eligible, the Case Manager sends a Notice of Family Court Eligibility to each court in which the cases are pending. The Notice contains the date and time for the first status hearing in the Juvenile and Family Court. Court staff use a word processing merge to create a standardized Transfer Order which transfers each case to the Project, vacates then existing court dates, and advises the parties of the date and time of the status hearing. The status hearing is scheduled within 10 days of assignment to family court, and the court designates a day per week for family court cases. The status hearing on all the family's litigation is held for the purpose of clarifying and/or settling issues in all the pending cases. Subsequent concurrent hearings are scheduled as needed. The *one family—one judge* model is designed to avoid inconsistent orders, reduce scheduling conflicts and duplicate hearings, expedite cases to closure, and coordinate service delivery. Upon request of

counsel and as determined appropriate, the Magistrate has included the family’s related criminal cases in the family court proceeding.

The Circuit Court Judge has also promoted cross-county case coordination. He encourages attorneys in adjacent Marion County to transfer their client’s family law or juvenile cases to Johnson County, when the subject child resides in Johnson County and there is related pending litigation in Johnson County. Out of county attorneys continue to be resistant to this approach.

The family court has addressed service delivery and non-adversarial dispute resolution. The family court coordinates with the local community service collaborative (ACT) to obtain counseling or other needed services for indigent families. Because Johnson County’s local rules have long required mediation in domestic relations cases, the family court was not initially focused on mediation programming. However, the family court is currently considering submitting an ADR Plan pursuant to IC 33-4-13 to provide mediation services to low income parties.

The family court has utilized the Magistrate as a "facilitator" for some complex family cases assigned to the Circuit Court judge. These informal conferences have often resulted in case resolution, but when no agreement can be reached the litigation remains under the family court umbrella and the trial is conducted by the Circuit Judge.

Families Served in Johnson County

Johnson County was selected as a family court project in February of 2000, and began accepting cases that spring. As of December 31, 2002, the Johnson County Juvenile and Family Court pilot project had served 123 families involving 321 cases.

Monroe County Family Court Project

Basic Information

- Population:** 120,563
- County seat:** Bloomington
- Judicial officers:** seven
- Project Implementation:** February 2000
- Family Court Judges:** Judge Viola Taliaferro and Judge Marc Kellams
- Family Court Personnel:** The project was implemented with a new, part-time family court coordinator position that was later increased to a full-time position with benefits.
- Contact person:** Colleen McPhearson, ctcmcphe@co.monroe.in.us, 812-349-2094

Funding

Family Court Project Funding

- \$100,956** (\$50,000 per year for two years through 2001, plus one-time \$956 distribution)
- \$25,000** (\$12,500 per year for two years from 2002 through 2003)

County government

- \$44,000** (expenditure toward Family Court Coordinator salary through 2003)

Family Court Mission Statement

The Monroe County Family Court provides a forum for fair and prompt resolution of legal problems affecting families and children. The Family Court strives to transcend the traditional adjudicatory function and adversarial process and to look beyond the immediate crisis, fashioning remedies and orders designed to minimize future court involvement. The ultimate goal of the Court is the resolution of cases within a framework of due process, protection, and rational, efficient conflict resolution. This goal is one that benefits both families and the community as a whole. To accomplish its mission, the Family Court follows the one family—one judge model whenever possible, providing a more efficient system for both the family and the Court by reducing the number of hearings on related matters as well as the risk of inconsistent resolutions. Parties are encouraged or ordered to participate in counseling, self-help, mediation, and other government and community services as appropriate.

Family Court Model and Programming

The Monroe County pilot project uses different case coordination models in two divisions of the Circuit Court. Both models are administered by the family Court Coordinator.

Division 7 (which receives all the juvenile and probate filings by local rule) uses a *one family—one judge* model to transfer and bundle all, or most of the litigation involving the same family into its court. The family's related criminal cases are often transferred into this family court proceeding. However, sometimes the family's criminal cases and other minor civil cases are tracked for information purposes but not specifically transferred to Division 7, because these cases have progressed too far toward disposition in their court of origin or they are not significantly related to the family's overall stability and safety. Concurrent hearings are frequently held in Division 7 to avoid repeat hearings for multiple case families, and the court uses Family Court Rule 4 to take judicial notice of court orders in the family's multiple pending litigation.

Monroe County Division 2 uses a direct services case management model to provide needed intake interviews, service referral, case monitoring, and status hearings in complex custody cases with high-risk families. The Family Court Coordinator also conducts informal dispute resolution with parties and writes case reports as needed.

The project models used in Division 7 and 2 are both designed to expedite litigation, coordinate service delivery, monitor high-risk families, and avoid inconsistent court orders.

The family court project collaborated with Clinical Law Professor Amy Applegate at the Indiana University School of Law to create a paternity mediation program to help pro se families resolve custody and visitation issues outside of the courtroom. Professor Applegate and the family court coordinator supervise volunteer law students conducting the mediations, and conduct the more complex mediations themselves as needed. The mediation program also utilizes the pro bono services of local attorneys and members of the Community Conflict Resolution Project of Bloomington. In 2003 the mediation project was expanded to divorce custody disputes. Monroe County has filed an ADR Plan to increase filing fees to subsidize mediation services to low income parties.

Families Served in Monroe County

Monroe County was selected as a family court project in February of 2000, and began to identify cases that summer. As of December 2002, Monroe County had accepted 76 families into its family court project involving 235 cases. An additional 38 cases involving family members (such as criminal, small claims, and evictions cases) were tracked for information sharing purposes, but were not transferred or specifically designated as family court cases.

Porter County Family Court Project

Basic Information

Population: 146,798
County Seat: Valparaiso
Judicial officers: nine
Project Implementation: February 2002
Family Court Judge: Judge Mary R. Harper
Family Court Personnel: The project was implemented with the redesignation of an existing full-time juvenile coordinator position to a full-time family court coordinator position, and two, new part-time case manager positions. Staff has grown significantly, and the project was reorganized as a division of the probation department in 2003. Current staffing includes: one, full-time family court supervisor, one full-time case manager, and various full and part-time employees that staff the Community Access Center, truancy programming, family focused special probation, and office management. The project also contracts for local attorneys to serve as mediators for indigent families on an hourly basis.

Contact person: Alison Cox,
acox@porterco.org, 219-465-3600.

Funding

Family Court Project

Funding through December 2003
\$110,556 (\$54,800 per year for two years through 2001, plus one-time \$956 distribution)
\$25,000 (\$12,500 per year for two years from 2002 through 2003)
Court Improvement Project funding through 2003
\$109,449 (including separate grants for mediation and specialized services to at-risk, indigent families)

Indiana Criminal Justice Institute

Funding through 2003
\$20,000 JAIBG (Juvenile Accountability Incentive Block Grant) 2001-2003
\$78,529 Juvenile Formula Block Grant
Local Government funding through 2003

\$87,158 Porter County General Fund
\$20,000 Probation User Fees for truancy/delinquency programming

Other revenue sources from 2000 through 2003 for specialized programming:

Porter Starke Services/mental health	\$98,957
United Way	\$39,900
Discovery Alliance	\$43,521
Porter County Community Foundation	\$4,000
Anderson Foundation	\$20,000

Family Court Mission Statement

The Porter County Family Court will provide case management services and coordinate delivery of human services for families and household members who have cases throughout the judicial system. This approach will bridge the current gap between the fields of adult and juvenile justice. Service providers in the fields of family law, child welfare, education and mental health will be utilized. The comprehensive approach will gather and collect information on families appearing in front of the court under pertinent family law and juvenile cases. This "full service court" process will be coordinated in order to promote judicial consistency and to best serve the needs of Porter County's families and children.

Family Court Model and Programming

Porter County uses the *information sharing between multiple courts* model, generally referred to as *case tracking* or *one family-one case manager*. The family court supervisor identifies eligible families from reviewing a variety of information sources, including attorney appearance forms forwarded from the clerk, domestic violence reports and child abuse and neglect reports. The supervisor also receives referral forms or informal requests from judges, court staff, CASAs, attorneys and others.

Any family with multiple cases pending in the court system is eligible for the family court. When a family is selected for family court all of the family's pending litigation is included in the family court proceeding, including criminal matters significant to the family. An order is issued assigning the cases to family court, but the cases all remain in their original courts.

The family court case manager prepares a written

"case management" report that provides basic information about the pending multiple litigation for all the judges, attorneys, parties, and appropriate government agencies or service providers involved with the family. The case management report advises the courts and all appropriate persons of the legal issues impacting the family, ensures more informed decision making regarding safety and stability issues for the children, and helps coordinate needed services for families. The information sharing between all the courts and parties avoids conflicting hearing dates and inconsistent court orders for family members.

Porter County has also developed subsidized mediation services in divorce custody and visitation cases, and a "paternity clinic" that uses Valparaiso Law students to provide mediation services in paternity custody cases. Porter County filed an ADR Plan to increase filing fees to subsidize mediation services to low income parties in divorce and paternity cases, and is finalizing plans on a facilitation program in child protection cases for 2004.

The Porter County family court also provides a variety of special services for at-risk and high-risk families. It implemented a Service Access Center in 2002 to help refer families to services as ordered by the court, provide mini-assessments on family needs, and provide varied levels of direct services case management to at-risk families not otherwise receiving needed services. The direct services may

include home visits and coordination between the family's multiple service providers. The pre-existing "Project Attend" program was brought under the family court umbrella in 2003. This programming provides specialized services to the families of children with truancy and other school problems. A Special Services Probation Officer focuses on families in which both parents and children are on probation, and/or families with young children at-risk for becoming delinquent.

The 2003 reorganization of the family court project within the probation department creates an innovative approach to service delivery for the Porter County courts. Prevention and case management services are now accessible through the probation department for all case types, and probation services have an increasing "family focus."

Families Served in Porter County

Porter County was selected as a family court project in February of 2000 and began accepting cases early that summer. As of December 2002, the Porter County Family Court Project has served 128 families involving 488 cases in the "case tracking" program. As of October 2002, the divorce mediation program has served 34 families and the paternity mediation program has served 50 families. Since it began operation in January of 2002, the Community Access Center has been contacted by 207 families for service referral, and 33 families have been designated or referred for more intense services.

Detailed Discussion of Phase 2 Family Court Pilot Projects

Putnam-Owen Multiple County Family Court Project

Basic Information on Putnam County

Population: 36,019

County Seat: Greencastle

Judicial Officers: 2

Project Implementation: July 2000

Putnam County Project Judge:

Judge Diana LaViolette

Putnam Family Court Personnel: The project was implemented with a new, part-time project administrator position (appx. 10 hours per week). This position was split into two, part-time co-administrators in 2003 without increasing the total weekly hours. The project also contracts with local attorneys on an hourly basis for facilitation (like mediation) services.

Contact person: Co-Administrators Monica Fennell at mfennell@ccrtc.com, 765-655-1973, and Laura Paul at Laurapaul1@verizon.net

Funding for Putnam County

Family Court Project Funding

\$9,000 (designated solely for Putnam County in 2003)

Court Improvement Project Funding

\$37,200 for period of July 2000 through October 2001

\$37,000 available October 2001 through 2002

\$12,000 available 2002 through 2003

Putnam County Office of Family and Children

\$10,000 for facilitations in CHINS and high-risk custody disputes

Putnam County Community Foundation

\$12,000 through 2003

Basic Information on Owen County

Population: 21,786

County Seat: Spencer

Judicial Officers: 2

Project Implementation: January 2002

Owen County Project Judge: Judge Frank Nardi

Owen County Family Court Personnel: The project was implemented with a new, part-time project administrator position (approx. 10 hours per week). The project also contracts with local attorneys on an hourly basis for facilitation (like mediation) services.

Contact person: Christine Haseman at Hasemanc@yahoo.com, 1-812-336-4482

Funding for Owen County through 2003

Family Court Project Funding

\$11,000 (designated solely for Owen County in 2002 and 2003)

Owen County Office of Family and Children

\$10,000 for facilitations in CHINS and high-risk custody disputes

Family Court Mission Statement

(A) To provide an alternative to adversarial conflict resolution in the courtroom, and the inevitable escalation of hostility.

(B) To give all parties to the facilitation the opportunity to be heard, to hear each other's point-of-view in a positive and problem-solving environment, and to work together to reach an agreed-on resolution regarding the family matters involved. All facilitated agreements are voluntary and consensual. No one is forced to accept a proposed agreement.

(C) To allow an opportunity for balancing power among the litigants by providing a forum where all can contribute to an agreed settlement. Even if no final resolution can be reached, the facilitator can work with the parties to streamline the issues and stipulate to the matters that are not in conflict.

(D) To achieve more efficiency for the court staff and to make better use of court time, by, for example, reducing the number of repeated hearings in the same case. It will also expedite cases by bringing the parties together faster than the court could set a hearing.

(E) To provide protection and some guidance for those who are indigent and cannot afford the assistance of counsel, and also to assist retained counsel who cannot be fully compensated for their services.

(F) To decrease the trauma to the children involved.

(G) To provide a method of increasing the amount of information available at critical decision-making time points and encouraging a wide range of professionals to participate.

(H) To bring all relevant parties together at one time, thus allowing the sharing of information, opinions, and ideas that can resolve disputes, clarify issues, narrow differences, or reveal that no dispute actually exists.

Family Court Model and Programming for both Putnam and Owen Counties

The Putnam County Project began in 2000 with a grant from the Court Improvement Project (CIP), but it was not officially designated a family court project until it was selected in 2002 as the Putnam-Owen Multiple County Family Court Project. The Owen project was created by duplicating the Putnam County process, policies, and forms, modified to meet the specific needs of Owen

County. The Putnam County Family Court Administrator trained the Owen County Family Court Administrator, and provides ongoing input in project development. Owen County initially used the local attorney facilitators who helped develop the Putnam project in order to ensure some standardization between the projects and avoid "reinventing the wheel." However, Owen County is developing its own local facilitators and may explore the use of non-attorney facilitators. Putnam and Owen Counties maintain their funding separately and have separate family court personnel. The \$20,000 Family Court Project grant awarded to the joint project for 2002 and 2003 was apportioned by the Division of State Court Administration directly to each county depending upon its needs.

The pilot project model utilized in both Putnam and Owen Counties is affordable, non-adversarial dispute resolution referred to as "facilitation." Facilitation is used in CHINS and termination of parental rights cases, pro se divorces and paternity cases, and other appropriate litigation involving families. Putnam County has also facilitated the CHINS and related criminal cases involving the same child victim. The project model avoids unnecessary court hearings and helps families participate in their own case resolutions. The project is particularly geared to families without legal counsel.

The process is implemented when the part-time Project Administrator in each county receives referrals from the court or parties, conducts an intake meeting with the parties, researches court databases to identify if family members have other pending litigation to be addressed or joined in the facilitation, and arranges for one of the family law trained mediators to serve as a neutral in conducting a facilitation meeting. In CHINS cases or complex custody disputes, the facilitation meeting may also include the Office of Family and Children, child advocates, and service providers. These more complex facilitation meetings may have the additional goal of encouraging full disclosure between the parents and service providers on issues affecting child safety and permanency.

The facilitator's pre-set hourly rate of \$100 is paid from grant funds, but the family court issues orders for cost reimbursement upon the agreement of parties who are financially able to contribute. Pursuant to new legislation, Putnam County filed an ADR Plan in 2003 to increase filing fees to subsidize mediation services to low income parties in divorce and paternity cases.

The Putnam County family court project has some additional programming. It developed a "Pro Se Desk" where attorney volunteers answer basic legal questions and assist indigent or pro se parties to obtain necessary court pleading forms. It provides a resource room where persons can get information on available services. The Putnam County project has also initiated a pre-hearing intake program in protective order cases. The intake meeting assists pro se parents who are seeking child support or visitation orders as part of the protective order process, but have not yet filed a divorce or paternity proceeding.

Families Served in Putnam County

The Putnam County project was initiated in July 2000. As of December 2002, Putnam County has offered facilitation services to 102 families involving 125 cases, although not all cases have proceeded to a facilitation meeting. Data is not yet available on families served in the newly implemented protective order intake program or Pro Se Desk program.

Families Served in Owen County

Owen County accepted its first case in the fall of 2002. As of December 2002, the Owen County project had received six referrals, and conducted four facilitations.

Boone-Montgomery Multiple County Family Court Project

Basic Information on Boone County

Population: 46,107

County Seat: Lebanon

Number of judicial officers: 3

Project Implementation: January 2002

Boone County Project Judge: Judge Steve David

Family Court Personnel: The project was implemented with a new, part-time family court administrator position (25 hours per week) that serves both counties.

Contact person for both counties:

Rita Lindsey-Bowman, rlbowman@mail.com, 317-752-5169

Basic Information on Montgomery County

Population: 37,629

County Seat: Crawfordsville

Number of judicial officers: 3

Montgomery County Project Judge:

Judge Thomas Milligan

Contact Person: same as for Boone County

Combined Funding for Boone & Montgomery

Family Court Project Funding to cover both counties

\$30,000 per year, for two year period from January 2002 through December 2003

All the grant funds are deposited in Boone County and all expenses are paid from that account. The counties share the same part-time personnel. She works a portion of each week in each county.

Family Court Mission Statement

The mission of the Boone-Montgomery County Family Court Project is to identify multiple case families in each county. The Family Court Project operates within the framework of due process, protection, efficient conflict resolution, implementation of remedies (i.e. counseling, self-help, Mediation/Facilitation and other government and community services as appropriate), and orders designed to provide a more efficient system for both the family and the Court. The one family-one judge model will result in a reduction in the number of hearings on related matters as well as the risk of inconsistent resolutions for families involved in multiple court cases, particularly CHINS, paternity, and delinquency cases.

Family Court Model and Programming

Boone and Montgomery Counties primarily use the *one judge-one family* model. In each separate county, the Family Court Administrator is given referrals on multiple case families from the judiciary, Office of Family and Children case managers, CASAs, attorneys, and others. The Administrator researches the court records on each of the referred families and prepares a written recommendation to the involved judges for one or more of the following options: case bundling and transfer; combined status conferences; or information sharing. The judges accept or reject the recommendations, and necessary orders and case transfers are initiated to open a family court proceeding. Once a family is assigned to family court, the Project Administrator tracks that family to update its status in the multiple proceedings and to notify the court if new cases are filed. As she is able, the Court Administrator conducts record searches on the juvenile cases scheduled on the judge's calendar for the upcoming week. These weekly checks are conducted to alert the judge if a

child or his family has other related cases, and to determine if these cases should be bundled for family court processing. Both counties are very positive about the efficiencies of *bundling* related cases before the same judge, and Judge Milligan is particularly interested in avoiding duplication of services by Probation and the Office of Family and Children when a family has dual criminal and CHINS litigation.

One unique aspect of this project is the combined status conferences in CHINS and criminal cases involving the same incident of child abuse or neglect. Boone County conducts the combined status conferences to determine if there are any conflicting protective or treatment orders in the two cases, and to clarify the time lines for both litigations to avoid unnecessary delays for the child.

Boone and Montgomery Counties are both planning to develop affordable, non-adversarial dispute resolution in the coming year. The Family Court Administrator has completed family law mediation training and may provide some of the mediation services as part of her family court responsibilities. Both counties plan to file an ADR Plan to increase filing fees to subsidize mediation services to low income parties in divorce and paternity cases. Boone County also uses the Family Court Administrator to work with juvenile families to obtain documentation necessary to IV-E reimbursement of residential costs.

Families Served in Boone and Montgomery Counties

The joint pilot project was implemented in January 2002. Through December 2002, Boone County has served 26 families in 69 cases, and Montgomery County has served 12 families in 59 cases.

LaPorte County Family Court Project

Basic Information

Population: 110,106

County Seat: LaPorte

Judicial Officers: 7

Project Implementation: January 2002

Project Judge: Judge Robert Gilmore, Jr

Family Court personnel: To implement the family court project, the full-time Director of Juvenile Court Services position was partially redesignated to create a Family Court Coordinator position. The Circuit Court also redesignated a portion of another employee's time each week to conduct family court record searches. The Project hired a new, part-time Family Court Case Manager position at \$15,000 per year.

Contact Person: Krista MacLennan,
kmaclennan@laportecounty.org, 219-326-6808

Funding

Family Court Project Funding:

\$32,500 per year, for two year period from January 2002 through December 2003

Court Improvement Project Funding:

\$19,900

Family Court Mission Statement

The mission of the LaPorte Family Court is to improve the lives of children and families throughout LaPorte County. The improvement will be obtained by the courts' use of coordinated information allowing for consistent court orders, the involvement of appropriate services, and more family involvement in the ultimate resolution of matters pertaining to children.

Family Court Model and Programming

LaPorte County uses the *information sharing between multiple courts* model which it refers to as *case tracking*. The family's multiple cases may include all types of civil or criminal cases, but at least one of the multiple cases must involve a child related issue.

Upon receipt of a referral to family court, the case manager researches the court records to determine the status of the family's multiple cases and then makes a recommendation as to whether family court processing is needed. When the judge accepts a recommendation for family court, an order is issued assigning the cases to family court. Notice of the assignment and the list of case numbers are sent to the parties and to all the courts involved in the family's multiple cases. The cases all remain in their original courts. Each month a report is generated that reflects the basic information about the cases pending in the judicial system for family court families. Each judge receives a copy of this report with his/her cases highlighted.

Approximately one week before a hearing is to take place involving a family court family, the judge receives a copy of a family court case management report, which contains a detailed description of the matters pending related to all of the family members. If the judge elects to review this document, the judge makes copies of the report and submits them to the parties. Copies of the significant orders in each of the family's multiple case are archived into a family court database. This gives the judges and parties easy access to the family's multiple court orders for purposes of taking judicial notice in appropriate situations.

Initially, the multiple case families were identified from the CHINS case load and the Juvenile Magistrate and Circuit Court Judge were the primary users of the case coordination programming. However, the monthly family court reports and case management reports have gained significant acceptance and now all eight judicial officers utilize some aspect of these reports. The reports are being increasingly used in child custody cases, criminal sentencing, and additional juvenile matters. The School Judge utilizes the reports to gain an increased understanding of the family's litigation history and prior service delivery.

The LaPorte pilot project developed a "Judicial Assistance" program to help judicial officers link families to necessary services. This is particularly helpful in custody cases involving indigent, at-risk

families who are not otherwise eligible for services through the Office of Family and Children or other service providers. This program may include case monitoring and expedited hearings to ensure order compliance.

The pilot project also developed non-adversarial dispute resolution programming referred to as "facilitation." The family court coordinator serves as a neutral to conduct the facilitation meeting one hour prior to the scheduled CHINS Initial Hearing. The process is designed to give family members more input into the plans and services affecting their family. Parties, attorneys, case managers, service providers, CASAs, extended family members and close friends, and occasionally the child him/herself, participate in the discussion. It is less formal than a courtroom setting and the family members are empowered to "speak up" to tell the case managers and service providers what is really going on with their family. The facilitation process is also used at the permanency planning stage of the CHINS case. The permanency planning meeting is held at the Office of Family and Children several days prior to the scheduled Permanency Hearing. This non-adversarial process has enabled the court to streamline the Permanency Hearing because the facilitation nearly always results in an agreed permanency plan and the parties are able to file the necessary guardianship, change of custody or other documents necessary to implement the permanency plan prior to the Permanency Hearing.

Families Served in LaPorte County

The LaPorte Project was implemented January 2002. As of December 2002 LaPorte has served 42 families involving 249 cases, and conducted 75 facilitation meetings in CHINS cases.

Marion County Family Court Project

Basic Information

Population: 860,454

County Seat: Indianapolis

Judicial Officers: 65

Project Implementation: January 2002.

Project Judges: Judge Robyn Moberly,
Judge Scherry "S.K" Reid,
Judge James W. Payne, Magistrate Caryl Dill,
Master Commissioner Victoria Ransberger

Family Court Personnel: The project was implemented with one, full-time Family Court Project Coordinator position.

Contact person: Janiece Hinkle,
JHinkle@indygov.org, 317-327-4158

Funding

Family Court Project Funding

\$45,000 per year, for two years from
January 2002-December 2003

Criminal Justice Institute

\$7,000 for 2002 (grant in coordination
with Child Advocates, Inc.)

Family Court Mission Statement

The mission of the Marion County Family Court Project is to provide a comprehensive and coordinated process to handle multiple conflicts and justiciable issues involving a single family by providing coordination and continuity of services, thus maximizing family stability and judicial economy.

Family Court Model and Programming

The Marion County Family Court Project is designed to coordinate the litigation of families with multiple cases utilizing the *information sharing between multiple courts* model. Families are referred to the Family Court Project Coordinator for admission. When a family is selected, an order

assigning the family's cases to the family court is issued by the Lead family court judge. All the judicial officers involved with the family receive basic information about the family's pending litigation through a written "case coordination form." Attorneys, pro se parties, GAL/CASAs, and other necessary persons also received the case coordination form. The form lists the cause numbers, parties, hearing dates, issues, and significant orders in all of the family's pending litigation. As each case proceeds through litigation, the case coordination form is periodically updated and distributed to those listed above. As a general rule, the family's various cases remain in their courts of origin. All the courts and parties share information about the multiple cases through the case coordination form and the use of Family Court Rule 4 to take judicial notice of court orders from the family's other cases. This process enhances decision-making, avoids conflicting or redundant orders for the parties, and avoids scheduling conflicts.

Marion County also uses the *one family—one judge* model, which it refers to as *case bundling*. This generally occurs when a child is the subject of a CHINS case in juvenile court, and is also the subject of a dissolution or paternity case (or ongoing custody order) in another court. When a family is recommended for *case bundling*, the Lead family court judge issues an order assigning the multiple cases to *case bundling*. The parties are given notice that they have 10 days to object to the assignment to *case bundling*. Marion County implemented local rule 76.2 to expedite the transfer of all the related cases into the same court. Once the cases are transferred, the judge may conduct a joint status hearing or pre-trial conference on all the pending cases, and/or may set concurrent hearings when appropriate. The judge will maintain each case as a separate cause number with separate orders and separate records. The applicable standards of proof, rules of evidence and other due

process issues are complied with for each case type. When the litigation of all the cases is complete, the judge transfers the continuing jurisdiction cases (i.e. custody and guardianship) back to their courts of origin and the family court proceeding is closed. This process is designed to expedite cases, facilitate coordinated orders, and allow concurrent hearings in the family's multiple cases.

A subcommittee of the Marion County Advisory Board has laid the ground work for a Services Referral program. The planned Service Referral program will enable the civil judicial officers to invite or order parties to go to the Service Referral program to have orders explained or clarified, and to receive assistance in setting appointments for court ordered services. The personnel will give notification to the court and parties whether court ordered services have been obtained and will complete other requested monitoring. Lack of funding has prevented current implementation, but one potential option is to establish an internship with the Indiana University School of Social Work in the spring of 2004 to implement the programming.

Marion County is also developing mediation services for low income families in custody cases. The pilot project's ADR subcommittee and the Family Court Judges and Coordinator have developed a Modest Means Mediation program. The program will use volunteer attorneys to provide mediation services at low or no cost, based upon income. The program is developing appropriate procedures for mediation with pro se parties. Marion County has filed an ADR Plan pursuant to new legislation to increase filing fees to subsidize mediation services for low income parties in divorce and paternity cases.

Families Served in Marion County

The Marion pilot project accepted its first cases in June of 2002. As of December 2002, the project has provided services to 51 families involving 202 cases.

Review Of 2001 Independent Evaluation Conducted By Jeffrey Kuhn

A. Overview of Independent Evaluation

The Division of State Court Administration was awarded a federal Juvenile Accountability Incentive Block Grant (JAIBG) to conduct an independent evaluation of the Indiana Family Court Project in 2001. Jeffrey A. Kuhn, Esq., a Senior Fellow with the Center for Families, Children and the Courts of the University of Baltimore School of Law was contracted to serve as the independent evaluator. Mr. Kuhn's extensive experience in family courts includes his prior positions as administrator of the New Jersey Family Court System, chair of the ABA Advisory Board to the Community, Families and Justice Project, and staff attorney with the National Council of Juvenile and Family Court Judges specializing in family courts. He has authored many articles on family courts, and conducted court performance assessments in Idaho, Kentucky, Florida, District of Columbia, Maryland, Georgia, North Carolina, California, Texas and Michigan.²⁵

Mr. Kuhn's approach to the evaluation was broad based, including (1) a statewide assessment of family justice issues through a written survey of three hundred Indiana attorneys and judicial officers and three statewide focus groups and (2) a review of the processes and needs of the three original pilot counties through two separate (day-long) site visits to each county. The statewide survey and focus groups were implemented because the pilot counties represented only a small sector of the total state. The statewide approach ensured

greater diversity of input regarding rural vs. urban needs, as well as racial, religious, and cultural differences throughout the state. Additionally, Mr. Kuhn provided technical assistance to the project counties and educational workshops on the national perspective on family courts and related justice issues.

Mr. Kuhn submitted a preliminary report in the spring of 2001 and a final report in August of 2001. Access to the final report, entitled *Independent Evaluation: Indiana Family Court Initiative*, is available through the family court Web site at www.IN.gov/judiciary. The *Independent Evaluation* is referenced by specific page or chart number throughout this chapter. The references are indicated with a ©.

B. Statewide Written Survey of 300 Judges and Attorneys

Mr. Kuhn created the Indiana Family Justice Needs Assessment Survey that was distributed to one hundred judicial officers and two hundred attorneys from around the state in early 2001. *See report, Appendix A.* © The judicial survey participants were selected randomly from the list of judicial offices with juvenile or domestic relations jurisdiction provided by the Indiana Judicial Center. The attorney survey participants were selected randomly from the list of attorneys practicing in juvenile or family law provided by the Family Law Section of the Indiana Bar Association. The survey form advised participants that its purpose was "to help identify present and significant practices related

²⁵ Jeffrey Kuhn, "A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium," *Family Law Quarterly* (1998); Sanford N. Katz and Jeffrey A. Kuhn, "Recommendations for a Model Family Court: A Report from the National Family Court Symposium," (National Council of Juvenile and Family Court Judges 1991).

to state court handling of matters related to children and families." The return rate on the survey forms for the judicial officers was 56% and 31% for the attorneys. No persons from the family court pilot projects were included as survey participants.

In addition to obtaining demographic information on each survey participant (such as number of years in practice and areas of practice), the survey addressed four case management issues:

- (1) coordination of multiple case families
- (2) alternative dispute resolution (ADR)
- (3) needs and services for families and children
- (4) educational programming for judiciary and bar on children and families.

The following is a summary of Mr. Kuhn's data and the survey findings most significant to the Indiana Family Court Project.

1. Incidence and Identification of Multiple Case Families

The survey respondents were asked "what percent of your client or litigant caseload has more than one child or family law matter presently pending before the court?" Mr. Kuhn notes that the highest response rate was "no knowledge" as to the percentage of litigants/clients who have multiple case involvement. However, a substantial number of the respondents estimated that multiple cases involving the same person or family occur between 10% to over 75% of the time. *See chart I-3 and report narrative, p. 8.*[©] Based on these responses and national research data, Mr. Kuhn opined, "Therefore, the frequency with which families in Indiana appear in court for more than one matter is significant enough to be concerned about examining the means by which the courts can most effectively work with these families." *See report narrative, p. 8.*[©]

The survey results also indicated that (1) attorneys and judicial officers did not consistently ask clients/litigants if they had other pending litigation, *see chart I-4, p.9*[©], and that (2) the main source for discovering multiple case information is from the client/litigant, rather than

from court files, judge provided information, or other research, *see chart I-5, p.9*[©]. Mr. Kuhn concluded:

The responses to questions concerning the coordination of child and family cases in the Indiana courts indicates there is no formal, uniform tracking mechanism or procedure in place that facilitates the linkages of cases between family or same household members. When such linkages occur, they do so based on coincidental circumstances that disclose themselves through family members, themselves. Because the client or the litigant is the most frequent source of this information, there appears to be a need for the courts to develop a more formal mechanism in order to secure that information on a regular basis. See report narrative, p. 18.[©]

These survey results suggest a need for automated court technology to identify multiple case families. They also indicate a need to encourage attorneys to ask their clients about other pending court cases on a consistent basis. Indiana Trial Rule 3.1(A)(6) requires the petitioning party to list the caption and case number of the party's related cases in the Appearance Form. The survey results may equally suggest a need for judicial officers to ask litigants whether they have other pending litigation. Jurisdictional conflicts, redundant litigation, or uninformed decision making may occur when multiple case litigation is not brought to the attention of the court.

2. Proactive Interest in Case Coordination, but Barriers may include Court's Lack of Coordination Strategies and Confidentiality Issues

Survey respondents were asked to identify what action they would take if they became aware that a client/litigant had multiple case involvement. Thirty-two percent responded they would take "steps to consolidate," 26% responded they would ask for client input, 24% responded they would do "nothing," 8 % said they would inform the court, and 2% responded they would "transfer proceedings." *See chart I-6, p.10.*[©] When asked in the follow-up question why the respondent might not take any action with regard to the multiple case

[©] Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

situation, the most frequent response was "courts not ready." *See chart I-7, p.10.* © Mr. Kuhn interpreted this response to reflect a belief by survey respondents that the "courts are not prepared to handle coordinated or consolidated proceedings." Mr. Kuhn noted that the next most frequent response regarding why no action was taken when the client/litigant had multiple case involvement was "confidentiality." *See report narrative, p.10.* © This may indicate that current Indiana law on confidentiality in juvenile cases, or the perception of the law, serves as a barrier to case coordination in multiple cases involving the same children.

3. Use of Automation and other Intake Services for more Effective Case Management

The survey asked a series of questions to determine what "intake" services are performed by court personnel upon receipt of new or re-opened case filings. The survey defined "intake" to include the following: automated case record; record searches for other related cases; case summary sheet; assessment for service referral; service referral; assignment to case manager; and litigant interviews. Over half of the responses to the question indicated that the court had no intake services or that the respondent did not know if the court had intake services. *See chart I-9, p.11.* © Of those who responded that the court had intake services, 86% indicated that the court had automated case records, which Mr. Kuhn opined "bodes well for expanding functional use of automation to more effectively manage family law matters." *See chart I-10, p.12 and narrative survey conclusions, p.19.* © Responses also indicated knowledge that some court systems were providing the types of intake services that Mr. Kuhn suggested would be particularly helpful in juvenile and family law cases, such as court record searches, case summary sheets, intake interviews with litigants, service referrals, and assessments. *See chart I-10 and report narrative, p.12.* © However, Mr. Kuhn noted

that survey responses indicated that family history inquiries and assessments for service referral were not often conducted by court systems.

4. Alternative Dispute Resolution (ADR) Service Available, But May not be Affordable

The responses regarding ADR indicated that ADR services were generally available in family law litigation, and that some courts mandated ADR in family law matters. However, the data also showed that fees were assessed for most ADR services and that fee waivers were not frequently available. *See chart I-11, p.13.* © Responses to a follow-up question indicated the limited availability of pro bono mediation services and court payment of mediation. *See chart I-12, p.13.* © Mr. Kuhn opined that the responses to these questions, and an additional question about what types of ADR are available, indicate that ADR services in family law are primarily limited to mediation services and are only available to those litigants who can afford to pay for them. *See narrative p.14.* ©

5. Unmet Service Needs, Volunteerism, and Community Service Coalitions

Respondents listed the following when asked to identify five of the highest priority service needs for children and families in the courts in which they work or practice: counseling; supervised visitation; parent education; Guardian Ad Litem (GAL); and mediation. *See chart I-14, p.15.* © Follow-up questions focused on the existence of volunteer services and community coalitions that facilitate court-community partnerships and awareness of service resources. The responses indicated that GAL/CASA (child advocates) is the best known volunteer program. *See charts I-15 and I-16, p. 16.* © Some respondents indicated that community coalitions exist, but the majority of the respondents perceived that such coalitions did not exist in their communities or the respondents had no knowledge of whether the coalitions did or did not exist. *See chart I-17, p.17.* ©

© Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

C. Three Statewide Focus Groups

1. Overview

At the recommendation of Mr. Kuhn, three interdisciplinary focus groups were convened on March 21 and 22, 2001 in downtown Indianapolis to identify issues in family and juvenile law practice in Indiana. As with the statewide surveys, the focus groups were intended to collect information from a cross section of the entire state. The pilot family court counties were specifically excluded from the focus group sample.

Focus group 1 included representatives from the largest Indiana counties (based on population and number of judicial officers). Focus group 2 included representatives from medium sized counties, and focus group 3 included representatives from smaller counties. Each focus group was structured to last three hours and to include between twenty to thirty persons from the following disciplines and professions: judicial officers; law enforcement officers; attorneys from private practice, public agencies, and IV-D child support enforcement prosecutors; representatives from the Office of Family and Children and Probation; and representatives from mental health, CASA (child advocates), and domestic violence programming. Potential participants for each focus group were identified by the members of the Judicial Domestic Relations Committee and the Juvenile Court Improvement Committee. The identified persons were invited to attend the focus groups by a personal letter from Chief Justice Randall T. Shepard and a follow-up phone call from the family court project consultant. Approximately ninety persons attended the focus groups in total, and the multiple disciplines were well represented in each focus group.

Each focus group began with Mr. Kuhn's presentation on national trends and justice issues in family law litigation, and a brief outline of

Indiana's Family Court Project by the project consultant, Frances G. Hill. Participants were then asked to think about "what works, what requires improvement and the greatest needs of the legal system" for serving children and families in Indiana. Mr. Kuhn facilitated participant response by moving the discussion through the following topics:

- court management of cases
- due process and the rule of law
- alternative dispute resolution
- and safety and prevention issues

Individual participation in each of the focus groups was high, with participation occurring across all disciplines. Specific responses on needs and concerns for the justice system were recorded on flip charts. With fifteen minutes remaining in each focus group period, participants were given three colored stickers and asked to affix them on the flip chart pages to their highest priorities for the family justice system in Indiana.

2. Priority Issues and Needs in Indiana's Family Justice System

Mr. Kuhn synthesized the information obtained from the focus groups into the following priority issues or needs for Indiana's family justice system:

- Improved case management and tracking
- Domestic violence and protection order issues
- Legal and process issues involving confidentiality and information sharing
- Expansion of affordable Alternative Dispute Resolution (ADR) options
- Unmet service needs in the following areas: GAL/CASA (child advocates); alternative juvenile delinquency and prevention programs; supervised child visitation; and improved means to facilitate service delivery in these areas, including developing enabling services and service collaborations
- Training for judges, attorneys, court staff, law enforcement, and other service providers in child development, domestic violence, ADR, and assisting pro se litigants

© Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

- Building relationship and networking between schools and courts

See report at pp. 20-21. [©]

Four of these highest priority areas are discussed below with examples of specific and repeated comments. The domestic violence issues are not listed here as many of those concerns were addressed in the Indiana 2002 protective order legislation.

Improved Case Management and Tracking

The most frequently identified priority of the participants was improvement of the manner in which juvenile and family law cases are managed and tracked. Expediting case procedures was also a frequently listed priority. The following representative responses were given by focus group members:

- Need for guidance on how to consolidate cases
- Earlier case assessment and/or increased use of court conferencing to set time frames and issues
- Expediting cases by avoiding judicial delays, more uniformity of court procedures, and use of American Bar Association process time lines
- Need for on-line Internet inquiry to link cases
- Expediting CHINS and criminal cases involving same incident of child abuse or neglect
- Monitoring compliance with court orders
- Case managers to track families/assess needs

Confidentiality and Information Sharing and other Legal Issues

Issues relating to confidentiality and information sharing were the third most frequently identified priority. The focus group participants expressed significant differences of opinion with regard to confidentiality vs. information sharing. They differed in their perspectives on legal requirements, due process, privacy implications, and philosophy. Responses in this area included:

- Lack of clarity on legality of information sharing and confidentiality
- Need for access to information for good decision making
- Need for communication to other agencies
- Need/appropriateness of maintaining confidentiality

The following additional legal issues were raised in the focus groups: change of judge issues in termination of parental rights and custody/visitation modification cases; ex parte communications; and clarity of rules for case consolidation.

Alternative Dispute Resolution (ADR)

The need for ADR services was a frequently noted priority of the focus group participants. The following responses were given:

- Mediation should be used in child abuse/neglect cases involving Office of Family and Children
- Mediation needs to be affordable and obtainable for pro se litigants
- Need for access to mediation earlier in litigation process
- Need for low cost mediation in domestic relations cases
- Use of non-binding arbitration to help ripen the case

Resources for Service Provision

Focus group participants identified unmet service needs in the family justice system. The following responses are representatives:

- Need for enabling services
- Need for indigent counsel and child advocates (CASA/GAL) in juvenile and custody cases
- Need for supervised visitation services
- Need for prevention services
- Need for more juvenile alternative programs

3. Impact of Focus Group Results on Family Court Project

Mr. Kuhn recommended that the focus group data might inform and impact Indiana's family court project in several areas. *See conclusions on focus groups, pp. 22 and 23.* [©] Mr. Kuhn's most relevant recommendations are summarized below:

Case Coordination through Pilot Family Courts

Expansion of the pilot family court project may be a means to improve the manner in which courts manage their family law caseloads. Implementation of policies, practices and procedures to coordinate multiple cases involving the same family, and more efficient management of those cases, is a fundamental standard for family courts.

[©] Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

Need to Address Confidentiality Issues

Given the considerable concern surrounding confidentiality and information sharing issues in juvenile and family law, a statewide group of multi-disciplinary professionals might conduct an inquiry into the law and practice relative to these issues and offer recommendations for changes and/or improvements.

Developing Affordable ADR Services

Continuing discussion between the judiciary and bar should address the increasing need for ADR services, and the extension of these services to pro se litigants who often cannot afford traditional mediation fees. The innovative ADR programming piloted in Putnam County, which increases access to services, conserves judicial resources and increases docket control, should be considered for replication in other jurisdictions.

Court-Community Collaborations for Service Delivery and Continuing Education

Courts should explore "formalized collaborative efforts" with community agencies in which resources can be pooled instead of duplicated. Mr. Kuhn noted that collaboration occurs with the ACT program in Johnson County and the Wrap Around program in Monroe County. Courts should strive to build relationships with their school systems. Courts may consider volunteer resources for unmet service needs (such as supervised child visitation), and the appropriateness of pursuing increased CASA services in custody matters. Ongoing training and education in family and children issues, including child development, should be available to the judiciary and legal bar.

D. Site Visits to Original Pilot Counties

January through May of 2001, Mr. Kuhn conducted two, day-long site visits to the three original pilot counties: Monroe, Johnson and Porter Counties. With regard to the pilot counties, Mr. Kuhn's final report contains (1) an overview of the major processes and programs of the pilot projects and the data they collected; (2) a list of "best

practices" developed by the projects; and (3) a list of the "project challenges."

Mr. Kuhn was very positive about the efforts of the pilot counties in the development of mission statements and objectives, creation of procedures and forms, manuals, and development of best practices for coordinating and expediting the litigation of multiple case families and specialized ADR programming.

Mr. Kuhn graphed the data collected from the pilot counties in the following categories: numbers of court cases per family; most commonly occurring case types in multiple case families; case referral sources; family social factors; time to disposition; use of Family Court Rules; pro se representation; and use of ADR. *See charts II-1 through 11, p. 31-40.* [©] Also, Mr. Kuhn's report contains a discussion of the processes and programs developed in each pilot court. Mr. Kuhn's data and his narrative information on each county is not summarized here because more updated and detailed versions of this information are presented in Chapters 2 and 3 of this report. However, Mr. Kuhn's assessment of the "best practices" and challenges of the pilot counties are summarized immediately below, and his recommendations and conclusions are stated at the end of this chapter.

1. "Best Practices" Created by the Pilot Projects

As a preface to this section, it is significant to note that each pilot project developed different case coordination models and service programming based upon the individual needs and resources of their communities. Therefore, no one project demonstrated all of the innovations or best practices identified by Mr. Kuhn. *See report, pp. 44-47.* [©] The most significant best practices identified by Mr. Kuhn are:

Developing a family court handbook that explains in brief, simple language the operation of the family court, identifies its key personnel, and includes a simple user satisfaction form.

[©] Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

Using a Party Appearance Form, Family Information Form, Family Indicators or Profile Forms, or some other process to do one or more of the following functions: identify the complexity of the litigation or specify issues, list the family's multiple cases, or identify the family's significant history and service needs (particularly involving domestic violence or substance abuse issues).

Conducting regular meetings of a local Family Court Advisory Board with detailed minutes prepared and widely distributed, to facilitate a broader understanding of the family court project within the community and to obtain community input on the pilot project.

Providing more timely and effective services to high conflict families in complex dissolution matters.

Scheduling significant events in separate cases involving the same family concurrently before the same judge.

Implementing an active case monitoring and status review component as part of the case tracking and information sharing model.

Developing and implementing local rules of practice for the family court project.

Using local law schools to help address mediation and ADR resource needs.

In addition to his formal listing of best practices, Mr. Kuhn noted two other practices meriting special consideration: **(1)** the use of combined status conferences in Johnson County on the family's multiple cases, set within the thirty days or less of assignment of the cases to family court, *see report, p. 26*[©]; and **(2)** the "facilitation" project in Putnam County involving the use of a family law trained mediator to conference with parties, key service providers, and other extended family members to reach acceptable solutions in difficult cases, *see report, p. 42.*[©]

2. Project Challenges

Mr. Kuhn identified several challenges faced by the three pilot projects as summarized next, *see*

report, pp. 42-44[©]:

Maintenance of appropriate staffing levels to ensure quality case management

Absence of automated information system with basic family court management functionality

Limited Alternative Dispute Resolution resources

E. Independent Evaluation Recommendations

Mr. Kuhn's final report contains detailed recommendation and a very insightful conclusion. *See report at pp. 48-63*[©]. In summary, the recommendations encourage the continuation of the state Family Court Task Force, with added responsibility to do the following:

Explore court rules, policies, practices and procedures regarding family court matters.

Examine long term funding strategies to permit development and implementation of family courts and/or related court services and affordable Alternative Dispute Resolution. Provide guidance to local courts to resolve the challenges to effective coordination of multiple cases involving the same children and families.

Coordinate with the Judiciary Technology and Automation Committee (JTAC) to identify and meet the technological needs of Indiana's family justice system.

Work with local courts and bar associations to increase pro bono legal representation and assistance to pro se litigants in family law matters.

Use judicial leadership to establish collaborative working relationships to improve court and agency responses to domestic violence matters.

[©] Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

F. Conclusion of Independent Evaluation

The wisdom of Mr. Kuhn's final conclusion is equally as important as his formal recommendations. Mr. Kuhn encourages Indiana to continue the pilot programs that have been successful and to make a "place by place" determination as to what reforms may be needed in the remaining counties. He notes that change in Indiana should be gradual and that reform is not for the "short-winded."

Readers are encouraged to read Mr. Kuhn's conclusion for themselves, as quoted below from the last page of his report: *See report p. 64.*[©]

As clearly as change and reform is desirable in the family justice system, change in Indiana should be gradual. Arthur Vanderbilt, a former Chief Justice of the state Supreme Court in New Jersey (A state court known for progressive reforms.) once said, "Court reform is not for the short-winded." This evaluation and needs assessment exercise indicates that certain elements of family court are desirable within Indiana's courts. However, a family court within every court jurisdiction may not be Indiana's best response. More appropriate is a place by place determination in which family justice reforms are implemented based on individual needs within demographically and resource diverse jurisdictions.

To the extent possible, expansion of fiscal incentives that encourage development and implementation of family court projects is recommended. Financial support might come from new or existing grant programs. Some consideration should be given to funding of continuing support for family court projects via a supplemental appropriations request or from the Judiciary's general operations budget based on a re-prioritization of anticipated activities and expenses for the ensuing fiscal year.

Project sites should be subject to a thoughtfully conceived performance review process that takes into account the needs of Indiana's children and families as well as basic performance principles of family courts. This performance review should be conducted by an organization, group of persons, or person familiar with family court planning, operations and performance assessment.

Whether the family court concept is continued or expanded will depend on a variety of factors that include not only this needs assessment and performance report but also, resource factors and to some degree, the appetite for court reform. Whatever that outcome, individual improvements of component parts of the family court pilot projects that have experienced positive outcomes should not be abandoned. At the very least, this project has helped identify best or model practices that benefit Indiana's children and families. These should be continued and expanded upon for that reason alone.

[©] Please refer to "Independent Evaluation: Indiana Family Court Initiative," which is accessible through the family court Web site at www.IN.gov/judiciary.

Assessment and Recommendations

A. Methodology For Family Court Self-Assessment

This assessment focuses on the three family court projects implemented in 2000 as Phase 1 of the Family Court Project (Johnson, Monroe and Porter Counties) and the six additional family court projects implemented in 2002 as Phase 2 (Putnam-Owen Multiple County Project; Boone-Montgomery Multiple County Project; and single county projects in LaPorte and Marion Counties). The assessment also addresses the function and effectiveness of the Indiana Family Court Project at the state level.

1. Process and Outcome Considerations

The assessment of the pilot projects includes both "process" and "outcome" aspects. The "process" assessment focuses on the ability of each pilot county to initiate changes necessary to better serve children and families. It notes the ability of the court to design programming, implement the programming, and create written policies, procedures, and forms necessary to transfer the programming to other counties. The assessment addresses the organizational structure that is most conducive to expeditious and permanent program development, and the role of the Family Court Rules to overcome perceived or actual legal barriers to coordinating multiple case families. The assessment also considers critical factors of judicial leadership, local attorney involvement, and community participation in creating desired change. It considers the cost and potential funding for long term programming.

The "outcome" based assessment considers the Values and Outcomes statement written cooperatively with the original three family court projects. It addresses whether the project

programming satisfies these desired values and outcomes.

2. Information Sources for Evaluation

The following statistics and information sources were considered in the assessment:

Statistics

The pilot counties maintained an information sheet on each family served and compiled this project data on a spreadsheet. Data tables were created to show the numbers of court cases per family, the most commonly occurring case types in multiple case families, sources for identifying multiple case families, and the "at-risk" social factors of families served. Data was also collected on the models of case coordination developed in the pilot counties and the use of non-adversarial dispute resolution, service referral, and other specialized programming. Costs and funding sources for each pilot project were also tracked.

Twice annual family court meetings

Twice annual family court meetings were attended by the project judges and staff members and by representatives of the statewide Family Court Task Force. The meetings provided opportunities for pilot counties to share program ideas, court forms, and to address problems encountered. Outside speakers gave presentations on funding issues, community collaborations, evaluation methodologies, and the national family court perspective. Detailed minutes were distributed to all project counties noting new program developments and areas of concern.

Pilot county family court reports

The Phase 1 pilot projects used standardized forms to file detailed reports approximately every six months, beginning in June of 2000 and continuing to the present. The Phase 2 pilot counties filed implementation reports three months after their designation as pilot counties, and filed six month reports thereafter. The report formats for the Phase 1 and 2 counties were modified as the projects progressed through design, implementation, evaluation, and monitoring stages of development. In addition to financial and statistical data, the reports included narratives on task implementation, values and outcomes achieved, and examples (without names) of multiple case or complex custody families served during the six month period. The reports also included copies of new forms and policies and procedures, and minutes of local Family Court Advisory Board meetings.

Project manuals and brochures

The original pilot counties submitted in October of 2001 a manual of forms and documents which included the following: policies and procedures; case coordination report forms; form letters, notices and orders; brochures or brief executive summaries outlining basic programming; and all other additional documentation necessary to duplicate their programming in other counties. In January 2002, the major components of each manual were assembled into a Master Manual and distributed to the new Phase 2 counties to assist them in program development. In October 2003, the Phase 1 counties submitted updated manuals and the Phase 2 counties submitted new manuals. These manuals will be compiled and provided to the Phase 3 family court counties when they are selected.

Participant surveys

Each pilot project designed its own survey form to obtain feed back from attorneys, parties, probation officers, child protection case managers, child advocates, and other service providers involved in the pilot project. Each county chose its own questions and process for survey distribution. The one page survey forms generally asked if the survey respondent had been involved in a pilot project case and whether the project had improved the court process and/or service delivery for the family. Some counties distributed all survey forms at "one point in time" to collect generalized input from family court users. Other counties distributed case specific survey forms as family court cases were closed. The surveys were treated as an information source rather than as a technical evaluation tool. No formal calculation of return rate or responses was made. Pilot counties filed copies of completed survey forms with their October 2001 family court reports, and each county included its own assessment of the survey results in its family court report narrative.

Some Phase 1 and 2 counties use exit surveys on an ongoing basis. All the counties will utilize some assessment or survey process in the spring of 2004.

Pilot county site visits and 2001 independent evaluation

Grant funds were obtained to hire attorney and family court expert Jeffrey Kuhn to evaluate the three original pilot projects and to identify the major issues in juvenile and family law case processing statewide. In 2001, Mr. Kuhn and the Indiana project consultant conducted two separate site visits in each pilot county. Site visits varied in each county, but generally included interviews with judicial officers, court staff members, local attorneys, and representatives from probation, child protection and community service providers. Mr. Kuhn conducted an analysis of each county's data.

In March 2001, Mr. Kuhn, facilitated statewide focus groups and written surveys on family justice needs. Mr. Kuhn submitted his final report and recommendations in the summer of 2001, entitled *Independent Evaluation: Indiana family Court Initiative*.²⁶

In the fall of 2002, the Indiana project consultant began another round of site visits with the Phase 1 and 2 counties. The site visits varied in each county but usually included three to four, one-hour meetings with the following groups of people: judges; family court staff members; attorneys; and government, public, and private service provider agencies. Written summaries of the site visits were distributed to each pilot county, particularly noting areas of accomplishment and concern.

B. What We Have Learned

1. Incidence of Multiple Case Families and Unmet Needs in Family Litigation

The data from the individual project counties, as well as the results of the statewide focus groups and written surveys, validate the basic assumption underlying the Indiana Family Court Project that a significant number of families have multiple cases pending simultaneously in the court system.²⁷ The December 2002 statistics from the original pilot counties illustrate this point: Johnson County (123 families generated 321 cases); Porter County (128 families generated 488 cases); and Monroe County (76 families generated 235 cases). Factoring in the data from the Phase 2 family court counties, the seven largest pilot counties averaged between 2.65 court cases per family to 5.92 cases per family with the mode being 3.78 court cases per family. The family court data also showed that multiple case families demonstrate a high incidence of social factors that place children at risk, such as domestic violence, substance abuse, mental illness, child

abuse or neglect, severe parental conflict, and poverty issues. The data suggests that this population may have a high need for monitoring, prevention, or treatment services. Also, the anecdotal data showed unmet needs for affordable non-adversarial dispute resolution and service referral programming.

Additionally, the case law illustrates the social and legal problems that arise from failure to coordinate multiple cases involving the same child. Some examples include, CHINS and adoption cases on the same child in different courts, foster parent and grandparent adoption petitions on same child in different courts, separate paternity and adoption petitions regarding the same child in different courts, and CHINS and custody litigation involving the same child in different courts. Early identification of multiple case families and basic coordination efforts should avoid or reduce these situations.

2. Hallmarks and Strengths of the Indiana Family Court Project

The following are the hallmarks or strengths of the Indiana Family Court Project.

Family Court Concept

The Indiana Family Court Project is not a particular judge or building where all family law cases are heard. It is not one model or process for family law cases. Instead, it is a concept involving strategies and programming to better serve children and families. It encourages coordination of multiple case families to avoid inconsistent orders and uninformed decision making. The concept promotes a non-adversarial approach to family litigation.

Targeting special needs families

The Family Court Project does not seek to serve all families in all family and juvenile law litigation. The Project focuses on families with multiple cases, families with

²⁶ See Chapter 4 of the report for detailed discussion of the Independent Evaluation conducted by Jeffery Kuhn.

²⁷ See Chapter 2 of this report at section B. for a thorough discussion on the incidence of, and concerns regarding families who have more than one case pending in the legal system, and the need to provide case coordination for these families.

child safety and stability issues, and families without legal representation or without adequate funds to access the legal system and needed services.

Project individuality

Pilot counties are encouraged to create case coordination models and other programming consistent with their individual needs and resources. Pilot counties maintain accountability and a measure of standardization through the state Grant Terms, twice annual reports and family court meetings, and consultant oversight.

Family Court Rules

Family Court Rules were promulgated for the exclusive use of the pilot counties by the Indiana Supreme Court. The Family Court Rules deal with legal challenges to case coordination and information sharing for families with multiple cases pending in the legal system, including issues of jurisdiction, change of judge, judicial notice, and confidentiality.

State family court personnel

The Family Court Project utilized a private consultant to facilitate the development, implementation, and oversight of the pilot projects. The consultant was able to do the following: assist and encourage the pilot counties by sharing successful models, forms, and processes to expedite program development and to avoid "reinventing the wheel"; assist pilot courts to develop community ties essential to developing a family court culture and building future funding opportunities; hold accountable the pilot counties by monitoring for compliance with grant terms, data collection, and reporting requirements; and provide centralized leadership to ensure statewide coordination and an appropriate balance between standardization and flexibility throughout family court projects.

3. Systematic Development of County Pilot Projects and Community Involvement

A structured process was used in implementing the pilot county projects. Counties completed detailed written applications to serve as pilot courts. Selected counties signed Grant Terms and agreed to comply with project requirements. The Grant Terms were improved and clarified for Phase 2 of the Family Court Project based on the experience of the original pilot counties.

The pilot counties generally used a judicial-led team approach, referred to as a "project committee," to design and implement their projects. A project committee is composed of at least one judge and one or two other key persons, such as a court administrator or representatives from juvenile probation or child protection, a local attorney, or a major service provider. In each pilot county, staff was hired or reallocated from existing court or probation positions. The pilot counties also formed local Family Court Advisory Boards with community-wide representation.

With varying combinations of judicial and staff input, the pilot counties have accomplished all the necessary tasks. Each county has developed the administrative infrastructure necessary to implement its case coordination model or other programming. The project counties specifically adopted the Family Court Rules that addressed their needs. They conducted trainings and created brochures (or one page information forms) to educate the bar, court system, and relevant service providers on their programming. They developed and maintained data collection, and they filed detailed project reports and attended family court meetings approximately every six months.

4. Factors Contributing to Project County Success

Successful implementation of case coordination models and other family court programming involves a "process." Site interviews and family court meeting discussions emphasized the following factors as significant to project success:

Committed judicial leadership

A successful project requires a dedicated judge (or judges) who will allocate adequate time to thoughtfully plan programming, address legal barriers, network with the bar and larger community, and be easily accessible to staff persons responsible for implementing project programming. Judicial leadership is important to obtain community and government support for long term funding. Collegiality and the support of all the judicial officers in the county are important to case coordination efforts, even the support of judicial officers who do not hear family or juvenile law cases. For example, the cooperation of the criminal judges is critical to ensure that criminal courts send to the family court coordinator copies of criminal rulings that will impact decision making in the family's custody or child protection case.

Staff and resource development

Judicial leadership must clearly reallocate the responsibilities of an existing staff person, or hire a new person, to implement project programming and manage current and future funding issues. Experience has shown that judges cannot implement programming without staff persons specifically designated to the family court project. A staff person is needed to complete administrative tasks and to interface with lawyers, parties and service providers to explain and implement programming. Counties with staff persons specifically designated to grant writing were most effective at developing funding for ongoing and new programming. Also, judges with juvenile court jurisdiction have significant access to services for children and families, and have tended to be more comfortable (at least initially) with the process of designing and funding specialized programming for children and families.

Legal bar and community support

Significant involvement of the bar

association, government agencies, private service providers, and child advocate organizations has expedited and enhanced project development. Forming a local Family Court Advisory Board and maintaining public relations through media and community meetings garners public support for the family court project. Advisory Boards that meet regularly and have significant judicial leadership have been very helpful in generating program ideas, addressing funding issues, and sharing information about the pilot projects throughout the larger community. Also, the involvement of a pre-existing, interdisciplinary group focused on the needs of families and children in the county has expedited family court project development. Some examples of interdisciplinary groups are the Juvenile Summit in Porter County, ACT in Johnson County, and Wrap Around in Monroe County.

5. Types and Effectiveness of Family Court Programming

The pilot counties developed programming in three broad areas: coordination of multiple case families; non-adversarial dispute resolution; and specialized services for at-risk, high-risk, and/or low income families. Effectiveness of the programming was measured by satisfaction of the values and outcomes established at the outset of the Family Court Project. The values are:

- Integrated information systems
- Coordination and consistency
- Expedition and timeliness
- Safe and healthy children and families
- Non-adversarial dispute resolution
- Transferability of programming to other counties

Phase 2 of the Family Court Project sought to meet the additional value of effectiveness and expediency in pro se litigation, and the goal of developing multiple county family court programming.

The three program areas are reviewed next in

conjunction with the family court values. A section on the transferability of the programming to other counties is included at the end of this discussion.

Coordination of multiple case families

The pilot counties created two different models to coordinate multiple case families: (1) transfer the family's multiple cases to the same judicial officer (referred to as *one family—one judge* or *case bundling*), or (2) provide basic information on the family's multiple cases to all the judges, attorneys, parties and service providers involved with the family's multiple cases without transferring the cases to the same judge (referred to as *information sharing between multiple courts* or *case tracking*). Direct services case management and non-adversarial dispute resolution were also used as coordination mechanisms for some multiple case families. All the pilot counties utilize one or more aspects of these case coordination mechanisms.

Although the two models of case coordination do not provide all the same benefits, both models create "opportunities" for more informed decision making about families and satisfaction of family court values of consistency, expediency and service coordination. For example, case coordination reports listing the cause numbers, hearing dates, and summarizing orders in all of the family's litigation should avoid scheduling conflicts and delays, enable more informed decision making by judges and attorneys, and help the family's service providers avoid service gaps or redundancies. Transferring all of the family's cases before the same judge provides the opportunity for case consistency and coordination. Taking judicial notice of the orders in the family's multiple cases pursuant to Family Court Rule 4 should better inform judges and parties about safety or stability issues impacting the family.

Each pilot county is very supportive of the case coordination model it uses. It does not seem feasible or necessary to try to select one model as superior to the other.²⁸ Site visit

interviews, pilot project report narratives, and participant surveys reflected strongly held beliefs in the pilot counties that their case coordination efforts resulted in more informed decision making and service coordination for families. Family court judges and staff members consistently expressed commitment and enthusiasm for case coordination as a better way to serve children and families. Project personnel reported that coordination of services is particularly effective and expeditious for families without legal representation. Just having information about the family's other litigation, even without more, is perceived by the project counties as a powerful tool for better serving families. However, lest the picture appear too rosy, it is important to note that every site visit revealed pockets of judges, attorneys, or service providers who were not aware of, or were not otherwise availing themselves of the case coordination systems and the Family Court Rules.

With regard to case expedition, Johnson County schedules combined status hearings in multiple case family litigation within 10 days of the cases being transferred to the family court, and it reports that it has been able to expedite about a fourth of the family court case load by processing those multiple cases to closure in an average of 39 days. Monroe County reported time savings through concurrent hearings. Participant survey responses indicated that combined status hearings and concurrent hearings before the same judge expedited and simplified the court process for some multiple case families and their attorneys. However, it should be noted that disposition data from the pilot projects indicates that it is not always possible or desirable to expedite complex and troubled families too rapidly through the system. Multiple case families, particularly those involved in child protection litigation, often have serious problems requiring extensive service delivery and monitoring.

²⁸ See Chapter 2 of this report at section B.2. for discussion on factors inclining court systems toward the one family-one judge model or the information sharing model.

Non-Adversarial Dispute Resolution

Affordable, non-adversarial dispute resolution has been the fastest growing programming within the family court projects. This programming can avoid lengthy court hearings and the tensions and harms of the adversarial process for families. Five family court projects provide non-adversarial dispute resolution, and three others are developing it. 2003 legislation allows counties to collect an alternative dispute resolution fee to subsidize mediation and facilitation for low income families.²⁹ This will further enhance the ability of family courts to provide affordable, non-adversarial dispute resolution.

The non-adversarial dispute resolution programming varies between the project counties. Some family courts provide traditional mediation in child custody and visitation cases. Other projects use a more flexible dispute resolution model referred to as "facilitation" in custody and juvenile matters. The facilitation model has been particularly effective in child protection cases (CHINS), as it promotes increased information sharing among service providers and parent involvement in reunification efforts and permanency planning. Facilitation meetings have also been used to resolve separate criminal and CHINS cases involving the same incident of child abuse or neglect, and other multiple litigation situations.

The family court projects vary with regard to who conducts the actual mediation or facilitation meetings. Several counties pay local attorneys at an hourly rate, on a case-by-case basis, to conduct these meetings. Other counties utilize family court personnel or local social service providers who are trained in family law mediation. Many counties use a combination of the above, and also involve volunteer attorneys and law students.

Another important variable in program delivery is the use of an "intake" meeting, which is particularly helpful with pro se families. Family court personnel conduct pre-

mediation intake meetings to assist parties understand, schedule, and prepare for mediation. This time saving device can screen out inappropriate referrals, and ensures that parties come to the mediation meeting better prepared and with necessary financial documents. To promote informed decision making, intake personnel also conduct record searches to provide the mediator and parties with information on the family's other pending litigation. Family court personnel also coordinate post-mediation activity to ensure that agreements are presented expeditiously to the court for approval or necessary hearings are scheduled.

Pilot project data shows significant positives in alternative dispute resolution. Putnam County's facilitation program in pro se custody disputes, CHINS, and termination of parental rights cases has an 83% success rate in obtaining agreements. Porter County's paternity mediation project, which utilizes Valparaiso Law School students and local attorney volunteers, has a 90% settlement rate. Porter County's divorce custody mediation project has a 58% settlement rate. Since it began its facilitation programming in January 2003, La Porte County obtained agreements in 70 of the 75 CHINS cases referred to the program, involving 119 children. Also, these programs serve a significant number of pro se parties. Eighty-seven percent of the fathers in the Porter County paternity mediation project were unrepresented, and in 64% of the Putnam County facilitations at least one party was pro se. Regarding case expedition, the facilitation projects in Putnam and Owen Counties have an average case disposition of 68 and 59 days respectively on closed family court proceedings. However, the average length of the open family court proceedings is 120 days. It may take substantially longer periods of time to set up the facilitation meeting in complex CHINS and termination cases, and to schedule the court hearings necessary to approve agreements.

²⁹ See IC 33-4-13.

Specialized services for at-risk, high-risk, low income, or pro se families

Pilot project judges and personnel indicate that services are often not available for low income litigants in divorce, paternity and protective order cases. Some of these families demonstrate behaviors highly detrimental to child safety and stability, but they are not eligible for services through the local office of family and children or probation department. The pilot projects developed service referral programs and "resource rooms" to serve these families. Also, the family court projects developed direct services case management programming for high-risk families. This programming may include a wide variety of services by the family court staff, including home visits, "mini" needs assessments, regular meetings with parties to explain court orders and help family's access services, and informal mediations to settle minor disputes for litigious families. Counties have also developed specialized programming for protective order families and families without resources to initiate necessary family law litigation. Two counties have partially or fully incorporated their truancy programming into their family court projects to ensure a "family approach" to school problems. Affordable substance abuse testing and treatment continues to be an unmet service need in family law cases, and it is anticipated that Phase 3 of the family court project will introduce "family focused" drug court programming.

The broad range of service programming provides the opportunity for families to receive needed services and for the court to facilitate and monitor service delivery. Site visit interviews and participant surveys reflected strong support for service programming. A few representative comments are noted here. Porter County judges and attorneys commented on the benefits of the service referral programming that keeps judges out of the social work business, and ensures that at-risk families get prompt access to court ordered services. Participants in site visits in

Monroe County indicated that the family court process plays a significant role in coordinating the family's multiple service providers and attorneys.

The family court projects have not generally maintained statistics on all services provided for families assigned to the family court project, but will begin to do so in 2004. However, there are some available statistics. The Porter County service program, referred to as the Community Access Center, was in contact with 207 families for service referral and other needs since its implementation January 2002. Thirty-three families were referred to the Access Center for more intensive case management services. Monroe County provided direct services case management in 13 complex and high-risk custody cases.

Transferability of pilot programming to other counties

With regard to transferability of pilot project programming, the Phase 2 pilot projects have relied extensively on the processes created by the original family court projects to create their own projects. LaPorte County adopted the *information sharing between multiple courts* model from the Porter County pilot project. Marion, Boone, and Montgomery Counties adopted aspects of the *one family—one judge* model from Johnson and Monroe Counties, but also use the *information sharing* model as appropriate for certain families. Putnam County's facilitation programming has been transferred effectively to Owen County.

The Phase 2 counties adopted and adapted the written policies, procedures, and forms created by the original pilot counties. Also, the original counties served as mentors to the Phase 2 counties when asked, and provide training on process and problem areas at the twice annual family court meetings. Some project staffs are more effective at mentoring than others, and future efforts at the state level to facilitate mentoring will be helpful.

6. Challenges to Case Coordination and Pilot Project Development.

The Indiana Family Court Project has faced several challenges in the last four years. Some of the anticipated challenges turned out to be insignificant, some were resolved with system communication and cooperation, and some will be resolved in the future with technology advancements. Others will be resolved over time, with a gradual shift away from the "adversarial" approach to a "family-focused problem-solving" approach. None of these challenges presents a permanent barrier to effective family court functioning. The major challenges are outlined below.

Legal issues in project counties and across the state.

The *information sharing between multiple courts* model and the *one family—one judge* model create legal challenges with regard to jurisdiction, confidentiality, judicial notice, judicial prejudice, and change of judge. In July 2000 the Indiana Supreme Court adopted four Family Court Rules for the exclusive use of the project counties.³⁰ The Rules addressed most of the legal issues. The experience of the pilot projects indicates that the Family Court Rules are being used in the project counties, particularly the rules regarding jurisdiction, judicial notice, and concurrent hearings.

Despite the Family Court Rules, the pilot counties continue to raise questions about the breadth of the judicial notice provision. There are concerns about the Change of Judge "for cause" rule, particularly the application of this rule to termination of parental rights cases. Attorneys also raise ethical issues on required disclosure of information regarding their client's other litigation, and the release of confidential juvenile records to persons who are parties to only some of the family's multiple litigation.

It is also significant to note that Family Court Rules have no impact in non-project counties. Data from the statewide focus

groups and written surveys indicate that attorneys throughout the state may be unclear as to when and how the family's multiple cases can be transferred to the same judge, and/or otherwise coordinated. There are frequent questions about how information from one case can be utilized by the judge and parties in another case. Attorneys around the state continue to raise confidentiality and judicial prejudice as challenges to coordination of the family's multiple cases.

Jurisdictional issues continue to challenge coordination efforts statewide, as well as local rules and policies on judicial case assignment. Indiana lacks a comprehensive scheme to coordinate jurisdiction and case assignment in juvenile, custody, and probate cases involving the same child. While the pilot projects have made inroads with regard to case coordination on a county by county basis, statewide attention to these issues is also appropriate.

Technology and identification of multiple case families

Effective processing of multiple case families is dependent upon early identification of these families and the court's ability to coordinate and promptly provide adequate notice of multiple proceedings to multiple parties. Many court systems have separate databases for juvenile, civil, and criminal cases. Even in those systems with integrated databases, slight differences in case designations and party names make identification of related family cases difficult. Current technology requires significant staff labor to identify multiple case families through court record checks.

The family court project consultant and a significant number of pilot project judges and personnel have participated in two discovery sessions with the Supreme Court's Judicial Technology and Automation Committee (JTAC) and the vendors for the new statewide case management system. These sessions have noted the future availability of unique "identifier" numbers for every person in the

³⁰ See Chapter 1 at section F. for list of Family Court Rules.

court system, a "family court jacket" to track and store data on multiple case families, access to court orders from other courts within and outside of the county, automated notices in the family's multiple cases, and Internet links to significant child serving government agencies and their databases. These processes can substantially aid in automated identification, coordination, and processing of multiple case families.

In addition to time consuming record searches, the pilot projects have used several alternative methods for identifying multiple case families, including: requiring attorneys to list all of the client's pending litigation in the case appearance form; judicial inquiry at preliminary hearings about potential multiple cases; comparing incoming domestic violence police reports and child abuse reports against existing court databases; and referral or identification forms that can be used by any court staff member, attorney, agency or party to identify eligible families. These methods have had varying degrees of success and should be pursued to the extent they promote full disclosure and information sharing in family law matters. Attorneys and judicial officers should be particularly encouraged to identify multiple case families as "best practice" in order to better serve families and children.

Project resistance

First and foremost it should be noted that most of the anticipated resistance to family court programming never materialized. Judges, lawyers and staff persons adjusted and generally appreciated the changes. However some resistance did occur and effective action was taken to correct the situations and avoid future resistance. The projects have shown that resistance of court staff to new processes can be overcome by judicial leadership and the involvement of court staff in implementing changes. The experience of the family court counties has been that attorneys are generally very supportive and welcome the opportunity to assist their clients through case coordination and affordable service delivery.

However, occasional attorney reluctance or resistance to new procedures and programs was dealt with by the following: involving bar leadership in project development and rule subcommittees; providing Continuing Legal Education (CLE) opportunities to explain project processes and limits; creating clear family court eligibility criteria and assignment criteria; and "word of mouth" advertisement of project successes and benefits. Resistance to specific projects or processes has usually dissipated through minor modifications and phase-in approaches to project implementation. Resistance to non-adversarial dispute resolution dissipated by involving attorneys as volunteers or paid mediators for the family court. Several family courts reported that their programming helped create a "culture" of non-adversarial dispute resolution within the legal community.

Judicial Time

Judges in the original pilot counties acknowledge that development and implementation of a pilot project can be time consuming. However, state family court personnel and mentoring counties can reduce the time burden for new pilot counties. Ready access to consultation and copies of tested policies, procedures, and forms avoids time wasted in "reinventing the wheel."

Additionally, use of an effective administrative point person reduces judicial time in the pilot county. The need for significant judicial input reduces when programming is fully implemented.

Funding

Funding is an issue for all programming. Each of the Phase 1 pilot counties received start-up funds of approximately \$50,000 per year for a two year period. Phase 2 counties received between \$10,000 to \$45,000 per year for a two year period. Phase 1 and 2 will continue to receive some reduced family court grants through 2005 to help them transition to permanent local funding.

Projects are making significant efforts

toward becoming self-sufficient.³¹ The project counties have used different methods to obtain resources for their programming. Porter County helped fund some of its family court programming by collaborating with existing community resources. The local mental health center helped fund the initial family court coordinator position and a collaborative grant between the court and mental health recently helped fund the Community Access Center. Porter County has also been successful in obtaining federal, state and local grants, including Court Improvement Project grants, Criminal Justice Institute delinquency and prevention grants, and local United Way funding. The Porter County family court project recently reorganized as a subdivision of the probation department to facilitate long term funding and administrative efficiency. Johnson and Monroe Counties worked with members of their County Councils and Boards of Commissioners to obtain local government funding for family court staff salaries and/or benefits. Marion County collaborated with Child Advocates, Inc. to obtain funding from the Criminal Justice Institute, and hopes to team with the Indiana University School of Social Work in developing a service referral program. Owen and Putnam Counties worked collaboratively with their local offices of family and children to underwrite the cost of facilitations in CHINS, termination of parental rights, and pro se custody cases. They also sought community foundation grants underwritten by the Lilly Endowment. Putnam County charges recipients for facilitation costs on a sliding fee scale, and the family court administrator is diligent in fee collection. Porter and Monroe Counties collaborated with the law schools to utilize volunteers to provide mediations for low income and pro se families in paternity cases.

Experience shows the benefits of devoting family court staff time to grant writing and

community collaboration for program funding. A state level Resource Development Position could provide critical assistance to counties as they seek to develop a permanent funding base for family court programming.

C. Recommendations

Based on what we have learned, the following recommendations are offered to the Indiana Supreme Court.

1. Incorporate the Family Court Concept into the Indiana Legal Culture: Create the "Family Court Initiative."

The pilot courts have demonstrated that the judicial system can focus on the "whole family" within the parameters of due process and fairness, and that this approach can be more efficient and effective for families and the legal system.

As developed by the pilot projects, the "family court concept" includes **(a)** coordinating multiple case families in an efficient and expeditious manner, to avoid duplicate hearings and inconsistent orders for children and to ensure more informed decision making, **(b)** promoting a problem-solving and full-disclosure approach in family law matters, **(c)** increasing the availability and affordability of non-adversarial dispute resolution, **(d)** assisting at-risk families to obtain needed service delivery and compliance with court orders, and **(e)** enabling pro se families to proceed more expeditiously through the court system.

The "family court concept" should be recognized and adapted into our legal culture. Renaming the Family Court Project to the "Family Court Initiative" will indicate endorsement and adoption of the family court concept.

³¹ See Chapter 1 section G. on Project Funding

2. Create a Family Court Coordinator Position within the Division of State Court Administration.

Implementation of the Family Court Project has revealed the essential need for permanent state personnel to teach, assist, encourage, and mentor pilot counties, and to hold them accountable to "best practices" and project requirements. A permanent Family Court Coordinator position within the Division of State Court Administration will assist new counties to develop the "family court concept" appropriate to their individual community needs. This would include direct assistance to the counties to develop case coordination systems, affordable mediation, service referral, case management for at-risk or chronic families, and/or other specialized programming or assistance for pro se families. The Coordinator will facilitate the exchange of information between the original and new pilot projects, and provide copies of tested policies and procedures and standardized forms that can be easily replicated in new projects.

3. Create a Grants Person Position within the Division of State Court Administration.

The projects have demonstrated that financial assistance is significant to initiating projects and later transitioning them to local resources. Program funding is available through a variety of sources but counties often lack the "know how" to access those resources. It is recommended that a second permanent position, a Grants Person, be created under the direction of the Division of State Court Administration to (a) obtain federal and state-wide grants to help implement case coordination, mediation, and service programming in new counties, and to (b) assist counties to develop a base of local funding and grants. A centralized and coordinated approach to grant funding will be more successful in garnering large grants and avoiding unproductive grant competition between counties.

4. Expand Affordable ADR and Service Referral Programming.

Affordable Alternative Dispute Resolution (ADR) and service referral programming for pro se and at-risk families was identified by the Family Court Project participants as highly effective and much needed. This effective programming should be spread to additional counties. Also, the ADR programming should be further refined to resolve ethical and administrative issues that arise when parties have no legal counsel, and to better define and standardize the practice of "facilitation." The Supreme Court should further explore the use of Senior Judges as an ideal source of affordable mediators for indigent parties.

5. Set Policies, Procedures, and Goals for Admitting New Counties into the Family Court Initiative.

The Supreme Court should set policies and long term goals for maintenance of the existing family court projects, and creation of new projects throughout the state. Policies for new project development should include application procedures, requirements, guidelines, state oversight, applicability of Family Court Rules, and data requirements. Goals may include a reasonable rate of expansion, and cyclical reassessment of family justice needs on a statewide basis. Although program innovation and flexibility should be encouraged, Family Court expansion should remain faithful to the original initiative of coordinating the litigation of multiple case families. Each family court should utilize some aspect of the *one family—one judge* or *information sharing* models to avoid inconsistent court orders and uninformed decision making for multiple case families.

6. Coordinate with JTAC.

Integrated information systems and other technology are needed to identify, link, track, and ensure adequate notice in multiple case family litigation. Internet and other access

technology can expedite incoming and outgoing information flow, thereby ensuring timelier information retrieval for the court and parties, and facilitating court ordered service delivery to families and children. The Family Court Initiative should work closely with the Judicial Technology and Automation Committee (JTAC) in the development and implementation of statewide case management systems and other automation. State Family Court personnel should work with individual counties as new case management software is implemented in conjunction with family court projects.

7. Convene Statewide or Regional Family Court Symposium.

A symposium of judicial, bar, government agency, and legislative leaders is needed to review the progress of the family court projects and to identify the future needs of the court and the community in family law issues. The symposium could follow the format of the statewide Alternative Dispute Resolution (ADR) Conference, which serves as an annual opportunity to address the "state of ADR", new issues and concerns, and make recommendations to the Supreme Court. Alternatively, the symposium concept could be organized as regional events. The Supreme Court's endorsement or sponsorship of the symposium would be significant to its success. In addition to educating on the family court concept and programming, the symposium could address the following:

Legal Issues in Case Coordination and Information Sharing

The Symposium could review our traditional practices, laws, and trial rules regarding jurisdiction, case transfer, case consolidation, judicial notice, confidentiality, status and settlement conferences, and change of judge, for the purpose of "brainstorming"

feasible modifications to simplify or expedite coordination of multiple case families and "best practices" for dealing with multiple case families. The experience of the Family Court Project and data from the statewide focus groups and written surveys indicate that attorneys are generally unclear how family law litigation can be transferred or coordinated. Also, attorneys raise ethical and confidentiality issues about sharing information with the court and other parties about their client's multiple cases, and raise concerns about cross-county information sharing.

Family Court Rules

The Symposium could review the Family Court Rules and make recommendations regarding the efficacy of the Rules, the need for modification, the policy and procedure for extension of the Rules to additional counties, and the potential permanency of the Rules.

8. "Seed" Grants to New Project Counties.

Seed grants from the Supreme Court will provide a fiscal incentive to initiate new family court projects and encourage their compliance with state project guidelines and requirements. This modest funding will signal the Supreme Court's support of the family court concept to local governments and bar associations, help with "start up" expenses, and can be used as "match money" to obtain other grants. It will provide some cushion as counties seek to reallocate resources, collaborate with community agencies, and access other funding streams for permanent project maintenance. Also, existing family court projects could benefit from modest continued funding as they transition to permanent funding sources, and/or until a state Grants Position is operational to provide needed assistance.

